

REPORTER'S RECORD

VOLUME 29 OF 55

TRIAL COURT CAUSE NO. 1184294D

COURT OF APPEALS NO. AP-76,596

STATE OF TEXAS) IN THE 432ND JUDICIAL
vs.) DISTRICT COURT OF
JOHN WILLIAM HUMMEL) TARRANT COUNTY, TEXAS

JURY VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

FEB 02 2012

Louise Pearson, Clerk

On the 1st of June, 2011, the following proceedings came on to be heard in the above-titled and numbered cause before the Honorable Elizabeth Berry, Judge presiding, held in Fort Worth, Tarrant County, Texas:

Proceedings reported by stenographic method.

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CHRONOLOGICAL INDEX

VOLUME 29

JURY VOIR DIRE

JUNE 1, 2011PROSPECTIVE JURORS:PAGEVOL

DARRYL DENNIS

State's Voir Dire by Mr. Gill.....

7

29

Defendant's Voir Dire by Mr. Cummings..

33

29

State's Peremptory Challenge.....

50

29

NIKKO MARTINEZ

Excused by Agreement.....

51

29

Prospective Juror No. 138, Carla Kidd

Excused by Agreement.....

51

29

MARIA RUIZ

State's Voir Dire by Mr. Brissette.....

57

29

Defendant's Voir Dire by Mr. Moore.....

89

29

Prospective Juror Accepted.....

122

29

Prospective Juror Sworn.....

122

29

Prospective Juror Instructed.....

122

29

Prospective Juror No. 135,

Martin Fernandez, Excused by Agreement.

125

29

KATHERINE MORRISON

Defendant's Peremptory Challenge.....

125

29

Disclosure.....

126

29

Court Reporter's Certificate.....

127

29

ALPHABETICAL LIST OF WITNESSESPROSPECTIVE JURORS:PAGEVOL

DARRYL DENNIS

State's Voir Dire by Mr. Gill.....

7

29

Defendant's Voir Dire by Mr. Cummings..

33

29

State's Peremptory Challenge.....

50

29

NIKKO MARTINEZ

Excused by Agreement.....

51

29

KATHERINE MORRISON

Defendant's Peremptory Challenge.....

125

29

MARIA RUIZ

State's Voir Dire by Mr. Brissette.....

57

29

Defendant's Voir Dire by Mr. Moore.....

89

29

Prospective Juror Accepted.....

122

29

Prospective Juror Sworn.....

122

29

Prospective Juror Instructed.....

122

29

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2 VOLUME 29 OF 55
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1 CHRONOLOGICAL INDEX
2 VOLUME 29
JURY VOIR DIRE
3 JUNE 1, 2011
4 PROSPECTIVE JURORS: PAGE VOL
5 DARRYL DENNIS
State's Voir Dire by Mr. Gill..... 7 29
6 Defendant's Voir Dire by Mr. Cummings.. 33 29
State's Peremptory Challenge..... 50 29
7
8 NIKKO MARTINEZ
Excused by Agreement..... 51 29
9 Prospective Juror No. 138, Carla Kidd
Excused by Agreement..... 51 29
10
11 MARIA RUIZ
State's Voir Dire by Mr. Brissette..... 57 29
Defendant's Voir Dire by Mr. Moore..... 89 29
12 Prospective Juror Accepted..... 122 29
Prospective Juror Sworn..... 122 29
13 Prospective Juror Instructed..... 122 29
14 Prospective Juror No. 135,
Martin Fernandez, Excused by Agreement. 125 29
15
16 KATHERINE MORRISON
Defendant's Peremptory Challenge..... 125 29
17 Disclosure..... 126 29
18 Court Reporter's Certificate..... 127 29
19
20
21
22
23
24
25 ALLIED COURT REPORTERS * (817) 335-5568 * (800) 562-7055
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21
22
23
24
25

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1 ALPHABETICAL LIST OF WITNESSES
2 PROSPECTIVE JURORS: PAGE VOL
3 DARRYL DENNIS
State's Voir Dire by Mr. Gill..... 7 29
4 Defendant's Voir Dire by Mr. Cummings.. 33 29
State's Peremptory Challenge..... 50 29
5
6 NIKKO MARTINEZ
Excused by Agreement..... 51 29
7
8 KATHERINE MORRISON
Defendant's Peremptory Challenge..... 125 29
9
10 MARIA RUIZ
State's Voir Dire by Mr. Brissette..... 57 29
Defendant's Voir Dire by Mr. Moore..... 89 29
11 Prospective Juror Accepted..... 122 29
Prospective Juror Sworn..... 122 29
Prospective Juror Instructed..... 122 29
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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5

PROCEEDINGS

VOLUME 29 OF 55

(WEDNESDAY, JUNE 1, 2011, AT 9:01 A.M.)

(Defendant present.)

THE COURT: Okay. 132.

MR. GILL: Darryl Dennis.

THE COURT: Okay. Deputy Court Reporter,

Jacci Walker, is present for the proceedings this morning and she was sworn by the Court as the deputy court reporter.

Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: Go ahead and have a seat, please. You are Potential Juror No. 132, Darryl Dennis; is that correct?

PROSPECTIVE JUROR: Yes.

THE COURT: All right. Mr. Dennis, I need to swear you in for this proceeding this morning. So if you'll raise your right hand, please.

(Prospective juror sworn.)

THE COURT: Okay. You will remember that this individual interview process is designed for both sides to have the opportunity to talk to you about the death penalty issues in this case as well as some of the other legal issues that will be confronted by

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6

jurors in this case.

PROSPECTIVE JUROR: Yes.

THE COURT: The person on trial is John William Hummel. His lawyers are Fred Cummings, Larry Moore, Pamela Fernandez. And the State is represented by Robert Gill and Miles Brissette.

You filled out this jury questionnaire. It's been about a month ago now. Has anything substantial changed in your life that would affect your ability to serve in this case as a juror?

PROSPECTIVE JUROR: No.

THE COURT: And anything about your schedule that has changed since we discussed the trial dates with you at the last meeting?

PROSPECTIVE JUROR: No.

THE COURT: Okay. I'm going to either need you to scoot up or move that microphone just a little bit so that everybody can hear you because you're kind of soft-spoken, and I know it's a little nerve racking to be up there in the hot seat, but everybody understands that.

So the State has the burden of proof in this case, so they get to go first. It will take about an hour for everybody to talk to you. There's water right there if you need some.

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PROSPECTIVE JUROR: All right.

THE COURT: Okay. You may proceed.

DARRYL DENNIS,

a prospective juror, having been first duly sworn, testified as follows:

VOIR DIRE EXAMINATION BY THE STATE

BY MR. GILL:

Q. Good morning, Mr. Dennis.

A. Good morning.

Q. How you doing this morning?

A. Okay.

Q. Did you work last night?

A. No.

Q. Okay. Are you still on the 2:00 a.m. to 10:00 a.m. shift?

A. Yes.

Q. Do you work out of a particular station?

A. Keller.

Q. Okay. I didn't know they worked all night up there.

A. Yeah. We open at two, so...

Q. Okay. That's a fairly -- at least that building's been expanded recently --

A. Yes.

Q. -- is that correct? Okay. It's functioning a

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8

little better up there now?

A. Not particularly, but more space.

Q. This is the individual voir dire that we talked about the last time you appeared in court, and you took another oath today. The same oath you took last time you were in court.

It obligates you to tell the truth about the things we ask you about today. If you're selected to be a juror in the case, which you will know right at the end of your interview this morning, you take a different oath and that oath binds you to follow the law and render a verdict according to the law and the evidence. Okay?

So the things -- We're going to kind of follow the same format we followed last time you were in court. I'm going to tell you a little bit about how the law works and then just ask you how you feel about it, then ultimately whether you can follow that law or not --

A. Yes.

Q. -- if you were a juror in the case. Okay?

And as we go through the process this morning, if I haven't explained myself very well, because you're the first person we're talking to today, or if you have any question about anything else

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9

1 at all as we go through this, please don't hesitate to
2 ask me.

3 **A. Okay.**

4 **Q.** How long have you lived in the Tarrant County
5 area?

6 **A. Five years.**

7 **Q.** Okay. You spent -- You spent the majority of
8 your life out in Los Angeles, correct?

9 **A. Yes.**

10 **Q.** Do you have any grandkids?

11 **A. No.**

12 **Q.** I notice just from reading your questionnaire
13 that there's a -- there's a lot going on out in Los
14 Angeles. You had -- There was court cases and you had
15 people that worked in the criminal justice system and,
16 you know, just a -- just a variety of things that --
17 that were stated responses to this questionnaire.

18 Is there anything about all that that
19 would affect you if you were a juror in a case here in
20 Tarrant County?

21 **A. No.**

22 **Q.** And I take it your jury service also is out in
23 Los Angeles --

24 **A. Yes.**

25 **Q.** -- is that right?

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1 You made the comment that you didn't have
2 to -- you didn't like to drive into downtown Los
3 Angeles?

4 **A. Yes.**

5 **Q.** I've done that one time in my life. I'll
6 never forget it. I didn't like it either. I don't
7 think I'll ever do it again.

8 We ask you a lot of questions about the
9 death penalty on your questionnaire. Lots of times
10 the best way to find out exactly what your views are
11 is to get you outside of those questions, just ask you
12 to tell us what is your opinion about the death
13 penalty as a possible punishment for crime?

14 **A. Well, I think like one of the questions you**
15 **asked me: What -- What I consider which offense would**
16 **feel that the death penalty should be used.**

17 I think the only thing I put in there
18 would be for child molestation. I'm really not either
19 for or -- I really don't know how I would feel about
20 having to give someone the death penalty or not. I
21 really haven't, you know, thought about it or -- I
22 don't know how it would affect me, if it would affect
23 me maybe afterwards. I don't know before or after.

24 So, like I said, I really hear some of
25 the jurors comment about religion and other things.

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1 Like I said, I believe in God. I believe, you know,
2 he has a final judgment on everything. So, like I
3 say, I'm really not -- I'm not torn either/or and I
4 wouldn't know how it would affect me until afterwards.

5 **Q.** Well, if you're ever going to give it some
6 thought about how it would make you feel afterwards or
7 whether or not you would be able to go through the
8 process and function as a juror, now is the time to do
9 it.

10 **A. Yeah.**

11 **Q.** Because we have this hour with you here this
12 morning. And once we're done, you're either going to
13 be on the jury or not on the jury. And, of course, if
14 you're not on the jury, you're released from service.

15 You go on about your business and you
16 don't have to worry about it any more. But if you are
17 on the jury, we can't ask you any more questions and
18 you can't ask us any more questions and you're just
19 bound to follow the law at that point.

20 **A. I understand.**

21 **Q.** You've got to follow the law whether you agree
22 with it or disagree with it at that point.

23 **A. Yes.**

24 **Q.** Do you have any more feelings you want to
25 express to us about the death penalty?

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12

1 **A. No, not particularly.**

2 **Q.** Well, then let me tell you how the law works.
3 And as we go through this, if you have any additional
4 questions or comments, please let me know.

5 **A. Okay.**

6 **Q.** First, let me ask you this question, and this
7 just pertains to your views: Is there any reason --
8 and we have a powerpoint so you can follow along with
9 what we're talking about visually -- is there any
10 reason; moral, ethical or religious that you could not
11 be a part of the process, that is, be a juror in a
12 case that results in the death penalty being assessed?

13 **A. No.**

14 **Q.** Okay. You mentioned that you feel like the
15 death penalty is appropriate for the crime of
16 molestation, but here's -- here's what our law
17 provides for. Our law provides for a death penalty in
18 this particular situation, that is, our definition of
19 capital murder; that a person commits capital murder
20 when he knowingly murders more than one person during
21 the course of the same criminal transaction.

22 Is that something you feel like ought to
23 be -- ought to subject someone to a possible death
24 penalty?

25 **A. Possible, I guess, depending on the**

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13

1 **circumstances in which it was committed.**

2 **Q.** Well, that's what the law provides for. The
3 law -- The law doesn't say that every person that
4 commits this crime gets the death penalty. The law
5 says, This is a crime for which people can possibly
6 receive the death penalty.

7 So that's my question to you. Is this
8 the type of crime that you think that some people
9 ought to get the death penalty for?

10 **A. Yes.**

11 **Q.** Okay. If an individual is convicted of this
12 capital murder, we move to the second phase of the
13 trial, which is called the punishment phase, and
14 that's the way all criminal trials work.

15 We have a guilt/innocence phase, then we
16 have a punishment phase. The punishment phase of a
17 capital trial is a little bit different than the
18 punishment phase in another type of criminal trial in
19 that the jury doesn't sit down in a capital trial and
20 decides what the punishment should be within the range
21 of years like we talked about last time.

22 The jury answers questions called special
23 issues. And I'm going to jump ahead a couple of
24 slides, and there are two special issues that are
25 given to a jury in a death penalty case.

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14

1 Where a person's been convicted of
2 capital murder, the jury's asked, first of all, is
3 this individual going to be a continuing threat to
4 society. We call that the future dangerousness
5 question, Special Issue No. 1.

6 Then the second question deals with: Is
7 there sufficient mitigation for a life sentence. We
8 call that the mitigation special issue. That's
9 Special Issue No. 2.

10 And the way that the jury answers those
11 questions tells the judge how the judge has to assess
12 the punishment in the case. If the questions are
13 answered one way, the judge has no choice but to
14 assess the death penalty.

15 If the questions are answered a different
16 way, the judge has no choice but to assess the
17 sentence of life in prison without parole. Okay?

18 **A. Okay.**

19 **Q.** We talk about a sentence of life in prison
20 without parole. The judge is going to instruct the
21 jury that that sentence means that the individual
22 convicted of capital murder will never exist again
23 outside the penitentiary.

24 They will serve -- Life means life in
25 Texas now for capital murder. You go to the

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1 penitentiary for capital murder on a life sentence and
2 you never get out of the penitentiary alive. Okay?

3 So we need to -- you need to keep that in
4 mind for our -- purposes of our discussion today.
5 Okay? You think that's a fair law?

6 **A. Yes.**

7 **Q.** Let me jump back real quick here to this
8 slide. The guilt/innocence phase of any criminal
9 trial, the jury's restricted to just that issue: Is
10 the person guilty or not guilty of the crime as
11 charged.

12 If there's a conviction of -- or if
13 there's a not guilty verdict, the trial is over. We
14 don't punish someone that's been found not guilty,
15 obviously, but if there is a conviction, then the jury
16 moves into the punishment phase of the trial.

17 At the punishment phase of the trial the
18 jury can consider all of this evidence. First of all,
19 they can consider all the evidence they heard at the
20 first phase of the trial. Okay?

21 So all the evidence about what the
22 individual on trial did on that one occasion in order
23 to get convicted of murder, the jury can consider all
24 that evidence.

25 Then we go -- The State could bring
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1 evidence beyond what we brought to you at the first
2 phase of the trial; such as, evidence of the
3 defendant's bad character, evidence of his bad
4 reputation and evidence of other crimes that he may
5 have committed.

6 We can't bring those things to you at the
7 first phase of the trial; only the punishment phase of
8 the trial. Okay?

9 **A. Okay.**

10 **Q.** Okay. And the jury may receive more evidence
11 at the punishment phase and the jury may not receive
12 more evidence at the punishment phase. If these
13 things don't exist, the jury's not going to hear about
14 them. Okay?

15 If the jury has convicted someone of
16 capital murder after they hear evidence or don't hear
17 evidence at the punishment phase, the judge gets
18 together another jury charge.

19 And in that jury charge the judge poses
20 these special issues to the jury. And here's Special
21 Issue No. 1. Let me give you a second to read through
22 it.

23 **A. Okay.**

24 **Q.** Okay. Did you have occasion to read the
25 paperwork the judge sent home with you last time you
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17

1 were in court?

2 **A. Yes.**

3 **Q.** Then you've seen this stuff before, but let's
4 break it down so that I can explain to you all the
5 different parts of it.

6 **A. Okay.**

7 **Q.** First of all, this phrase up here: Do you
8 find beyond a reasonable doubt. That tells the jury
9 that the burden of proof is on the State. Remember
10 that phrase "beyond a reasonable doubt"? We have to
11 prove someone's guilty beyond a reasonable doubt.

12 **A. Okay.**

13 **Q.** So when you see this phrase, that means the
14 burden of proof is on the State. We have to prove to
15 you beyond a reasonable doubt there's a probability
16 that the defendant would commit criminal acts of
17 violence that would constitute a continuing threat to
18 society.

19 And if the State proves that to you
20 beyond a reasonable doubt, the jury is obligated to
21 vote yes. And if we fail, the jury is obligated to
22 vote no.

23 **A. Okay.**

24 **Q.** And you know the effect of the answers?

25 **A. Yes.**

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18

1 **Q.** Remember -- Remember the way you answer the
2 questions tells the judge how the judge has to
3 sentence. Well, if the question is answered yes, that
4 the individual does constitute a continuing threat to
5 society, the jury is taken one step closer to giving
6 that person the death penalty.

7 **A. Okay.**

8 **Q.** If the question is answered no by ten or more
9 jurors, then the deliberation is over and the jury
10 would return to court and the judge would sentence the
11 individual on trial to a life sentence, because the
12 jury would have found they do not constitute a
13 continuing threat to society.

14 See what I'm saying?

15 **A. I understand.**

16 **Q.** Okay. Now, our legislature has decided that
17 this is -- this is one of the means we're going to use
18 to decide who gets the death penalty and who doesn't.
19 People who commit capital murder and are a continuing
20 threat to society are eligible for the death penalty.

21 People who commit capital murder and a
22 jury finds they're not a continuing threat to society
23 receive a life sentence. Okay?

24 **A. Okay.**

25 **Q.** All right. So some of the -- some of the

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19

1 other parts of this phrase here. The State has to
2 prove beyond a reasonable doubt there's a probability
3 that the defendant would commit these criminal acts of
4 violence.

5 And the word "probability," like the
6 phrase "beyond a reasonable doubt," is not defined
7 under our law. So you have to give probability and
8 the other terms that aren't defined by law whatever
9 definition you give it in your everyday business.

10 Okay?

11 **A. (Nods head.)**

12 **Q.** So what does probability --

13 **A. Yes.**

14 **Q.** -- mean to you?

15 **A. That he might do it again.**

16 **Q.** Okay. We've heard that definition from a lot
17 of people; might or there's a chance or that type of
18 thing. And our legislature used the word
19 "probability" here. They could have used the term
20 "possibility," but they didn't.

21 And they could have used the term
22 "certainty," but they didn't because they want the
23 State to prove somewhere between those two terms
24 because there's a -- there's a possibility of almost
25 anything.

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1 **A. Yeah.**

2 **Q.** And, obviously, the State can't prove to a
3 certainty that an individual's going to do something
4 in the future, which is what this question is asking.
5 So the legislature has chosen kind of a vague term in
6 between. It has a -- has a -- has a pretty wide range
7 of meaning.

8 Is that kind of how you see that phrase?

9 **A. Yes.**

10 **Q.** Then the next phrase is the phrase "criminal
11 acts of violence." We have to prove there's a
12 probability this individual's going to commit criminal
13 acts of violence.

14 What does that phrase mean to you?

15 **A. That he could possibly hurt someone again.**

16 **Q.** If we break that particular phrase down, it
17 has the word "criminal," so it has to be a criminal
18 act and it has to be a violent act.

19 Do you see that?

20 **A. Yes.**

21 **Q.** Okay. But it doesn't say anything in here
22 about criminal acts of violence against a person. So
23 the law doesn't narrow us down to just criminal acts
24 of violence against a person. It could be criminal
25 acts of violence against property or criminal acts of

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21

1 violence against a person.

2 You see that?

3 **A. Yes.**

4 **Q.** Sometimes these questions are important for
5 what they contain and sometimes they're important for
6 what they don't contain.

7 **A. Yes. Okay.**

8 **Q.** So we have to look at that language of what it
9 contains and what it doesn't contain. Pretty broad
10 phrase, isn't it?

11 **A. Yes.**

12 **Q.** Anywhere from a violent act against property
13 of some type all the way up to and including another
14 murder. See where that would -- that could -- would
15 also be a criminal act of violence?

16 **A. Yes.**

17 **Q.** Assaults, robberies, whatever it might be.
18 Anything that constitutes a criminal act of violence
19 is something that a jury could feel the individual was
20 capable of doing.

21 And the last phrase is the phrase
22 "society." What does the phrase "society" mean to
23 you?

24 **A. Everyone around. But I do have a question.**

25 **Q.** Sure.

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22

1 **A. If -- As a juror, if we're -- know this man is**
2 **going to jail, he won't be back into society. So when**
3 **you say "committing criminal acts of violence," are we**
4 **to consider the prisoner has -- because that's where**
5 **he'll either be killed or he'll be back in prison, so**
6 **we would consider prisoners, you know, that -- or we**
7 **consider that -- you know, that realm of society or --**
8 **like I said, he won't be back on the street, he'll**
9 **just be, you know, locked up for the rest of his life.**

10 **Q.** You know, I've spent a lot of time explaining
11 that concept to people since we started this, and you
12 saw it right off. That's -- That's part of the --
13 part of the issue with this question.

14 Here's a guy the jury has to deliberate
15 on who's never going to get back out in free society.
16 So what does this term "society" mean? So is the term
17 broad enough to you to include both prison society and
18 free society?

19 **A. I guess it would have to if you're asking it.**

20 **Q.** It doesn't make much sense to ask it if it
21 doesn't include prison society, does it?

22 **A. Yes.**

23 **Q.** And you also understand that there are a
24 number of people that move back and forth between
25 prison and outside society?

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1 **A. Guards, yeah.**

2 **Q.** Exactly. Guards, visitors --

3 **A. Yes.**

4 **Q.** -- ministers, healthcare individuals --

5 **A. Yes.**

6 **Q.** -- educators?

7 **A. Okay.**

8 **Q.** Sometimes people escape from the penitentiary.
9 It's just a -- You see it as being a pretty wide open
10 question?

11 **A. Yes.**

12 **Q.** So the question then to you is -- and you see
13 the issue exactly -- is the guy going to be in --
14 sentenced to the penitentiary the rest of his life.

15 Is it possible that the State could prove
16 to you beyond a reasonable doubt that an individual
17 who's going to be in the penitentiary the rest of
18 their life could be a continuing threat to society?

19 **A. Yes.**

20 **Q.** So given all of that, here's the next
21 question: Knowing that a yes answer moves the
22 individual on trial one step closer to receiving the
23 death penalty, could you answer yes if the State
24 proved it to you beyond a reasonable doubt?

25 **A. Yes.**

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1 **Q.** No problem about that?

2 **A. No problem.**

3 **Q.** On the other hand, if the State failed in its
4 burden of proof, would you be able to answer the
5 question no?

6 **A. Yes.**

7 **Q.** See, that's your obligation as a juror, is to
8 take into consideration this question and then all the
9 evidence that you've heard during the course of the
10 trial.

11 **A. Okay.**

12 **Q.** Now, one of the things I want to make sure you
13 understand also, and I'm sure you do, is that this
14 question is a completely different question you're
15 asked with the first phase of the trial.

16 At the first phase of the trial you're
17 asked to concentrate on what did this guy do on
18 this -- one particular date and did he -- did he do
19 the acts as charged by the State of Texas.

20 **A. Okay.**

21 **Q.** See. One day, very limited inquiry, very
22 limited issue. Is he guilty or not guilty of the
23 crime that we charged him with doing on this one
24 particular point in time.

25 And then this question is asking you to

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1 kind of look into the future and see if there's a
 2 probability that he would constitute a continuing
 3 threat to society in the future. So one day in time
 4 versus what's his future prognosis.
 5 **A. Is he capable of doing it again?**
 6 **Q.** Uh-huh. Or doing something -- or doing some
 7 type of --
 8 **A. Yes.**
 9 **Q.** -- criminal act of violence.
 10 **A. Okay.**
 11 **Q.** So we don't have --
 12 THE REPORTER: Allow him to finish. One
 13 at a time.
 14 **Q.** (BY MR. GILL) Okay. So we don't have to
 15 prove that he's going to commit another murder. We
 16 have to prove there's a probability he's going to
 17 commit some type of criminal act of violence, that
 18 wide open phrase.
 19 **A. Yes.**
 20 **Q.** Okay. Any more questions or anything about
 21 Special Issue No. 1?
 22 **A. No.**
 23 **Q.** Okay. So the next thing is Special Issue No.
 24 2. And I'll give you a second to read through that
 25 because it's fairly lengthy.

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1 **A. Okay.**
 2 **Q.** Okay. Again, one of the first things that's
 3 notable about this special issue is what it does not
 4 contain. It does not have the phrase "do you find
 5 beyond a reasonable doubt" up here. So that tells you
 6 what? There's no burden of proof on the State of
 7 Texas for this question.
 8 **A. Okay.**
 9 **Q.** We have a burden of proof at the
 10 guilt/innocence phase. We have the burden of proof on
 11 Special Issue No. 1, but no burden of proof on Special
 12 Issue No. 2, because it doesn't have that phrase "do
 13 you find beyond a reasonable doubt" up here.
 14 **A. Okay.**
 15 **Q.** And you also know from our previous
 16 discussions, there's never any burden of proof on the
 17 defense. So the defense has no burden of proof on
 18 this question either.
 19 **A. Okay.**
 20 **Q.** This is just up to you to decide as an
 21 individual juror if you find that there's some type of
 22 sufficient mitigating circumstance or circumstances
 23 about the case to warrant the life sentence instead of
 24 the death penalty. Okay?
 25 **A. Okay.**

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27

1 **Q.** This is a -- This is a way for the jury to
 2 say, Even though this guy's guilty of capital murder
 3 and even though we think that he's going to be a
 4 continuing threat to society, there's something about
 5 him or something about this case that makes him less
 6 morally blameworthy than someone else who might have
 7 done the same thing.
 8 **A. Yes.**
 9 **Q.** Because that's the definition of mitigating
 10 evidence, and the judge is going to give you this
 11 instruction if you're a juror in the case.
 12 Mitigating evidence is any evidence a
 13 juror might regard as reducing the defendant's moral
 14 blameworthiness, that makes him less morally
 15 blameworthiness than someone else.
 16 **A. Okay.**
 17 **Q.** Okay. Is there anything you could think of as
 18 we sit here today that might make someone less morally
 19 blameworthy than someone else that's committed the
 20 same type of act?
 21 **A. Depending on circumstances on why it was done.**
 22 **Q.** And a lot of people have given that reasoning.
 23 It depends a lot on the guy's motivation?
 24 **A. Yes.**
 25 **Q.** There's some motivations that might be

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28

1 mitigating and some motivations that might be
 2 aggravating, that might be -- that might not rise to
 3 the level of a sufficient mitigating circumstance,
 4 right?
 5 **A. Yes.**
 6 **Q.** Okay. Another example we have used quite a
 7 bit is an individual 18 years of age. An individual
 8 18 years of age under the laws of the State of Texas
 9 can receive the death penalty.

10 **A. Okay.**
 11 **Q.** But -- And, of course, when I give these
 12 factual scenarios, we're not talking about this case,
 13 but this is just an illustration, an example.

14 A juror that's deliberating on the case
 15 of an 18-year-old that's been convicted of capital
 16 murder might look at that 18-year-old and say, This
 17 guy is only 18 years old. He is not as mature as
 18 someone that's in his 30's or 40's that might have
 19 committed the same act; that his brain may not have
 20 completely formed yet.

21 He hasn't had the type of world
 22 experiences that lead him to form a solid and moral
 23 compass like someone who may be in their 30's and 40's
 24 and has lived more of life and seen more and
 25 experienced more.

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29

1 **A. Okay.**

2 **Q.** And a juror might say, Because of that, I find
3 that to be a sufficient mitigating circumstance under
4 the facts of this case, and, therefore, I think a life
5 sentence is more justified than the death penalty.

6 **A. Okay.**

7 **Q.** See where that might be the case?

8 **A. Yes.**

9 **Q.** Another juror might say, Wait a minute here.
10 I don't think that's a sufficient mitigating
11 circumstance because of what he did up here; the
12 circumstance with the offense, his character and
13 background, et cetera, and he might think 18 years old
14 is sufficiently mature.

15 They're as mature as anybody else because
16 they can drive an automobile, they can attend
17 colleges, they can serve in the military, they can
18 vote, they can do everything an adult can do, so that
19 matter is not a sufficient mitigating circumstance.

20 So it's just up to each individual juror
21 to decide for himself or herself based upon all the
22 circumstances of the offense, the defendant's
23 character and his background and his personal moral
24 culpability if there is a sufficient -- and we
25 highlight that word "sufficient" -- a sufficient

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30

1 mitigating circumstance or circumstances to warrant a
2 life sentence instead of the death penalty.

3 **A. Yes, I understand.**

4 **Q.** Okay. And your job as a juror would be, if
5 you find something to be sufficiently mitigating, that
6 you answer yes. And you say, Yes. There is something
7 sufficiently mitigating here, so the life sentence is
8 imposed.

9 **A. Okay.**

10 **Q.** And if you find some mitigating evidence but
11 don't find it sufficient or if you don't find there's
12 any mitigating evidence, nothing that reduces the
13 guy's moral blameworthiness, you vote no, because
14 there's nothing there that mitigates for a life
15 sentence instead of the death penalty.

16 **A. Yes.**

17 **Q.** Okay. So once we break it down, it's a --
18 it's a fairly straightforward concept, isn't it --

19 **A. Yes.**

20 **Q.** -- once we break it all down?

21 Now, again, there's no burden of proof on
22 the State because it doesn't say anything about beyond
23 a reasonable doubt up here and there's never any
24 burden of proof on the defense.

25 So it's strictly up to a juror to decide

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31

1 for himself or herself all the evidence they've heard,
2 is there something sufficiently mitigating here, and
3 it could be from the State's first witness.

4 The State could bring the evidence
5 because we don't know what you think is sufficiently
6 mitigating, and you may not know until you've heard
7 all the facts of the case.

8 **A. Yeah.**

9 **Q.** But the State's first witness may have proven
10 that the events on trial happened at the defendant's
11 18th birthday party. So if you think -- if you think
12 being 18 is sufficiently mitigating, the State could
13 have proven that to you.

14 See how that might work?

15 **A. Yes.**

16 **Q.** And, again, that's just an example.

17 **A. Okay.**

18 **Q.** And that example is to show you that that
19 mitigating -- sufficient mitigating evidence could
20 come from anywhere and the burden of proof is not on
21 the defense and they're not obligated to bring it to
22 you.

23 **A. Okay.**

24 **Q.** Because they don't know what it might be to
25 you.

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32

1 **A. Okay.**

2 **Q.** So given all that, knowing that a no answer to
3 Special Issue No. 2 would result in the death penalty,
4 in other words, the jury's deliberations are over at
5 that point, you return your verdict to open court and
6 the guy on trial gets the death penalty, knowing all
7 that, would you be able to answer Question No. 2 no if
8 you felt like that was the right answer?

9 **A. Based on the evidence, yes.**

10 **Q.** Based on the evidence. Exactly.

11 On the other hand, if you felt like yes
12 was the right answer, would you be able to answer yes
13 knowing that the defendant would be -- that you would
14 return to court and the judge would assess a life
15 sentence?

16 **A. Yes.**

17 **Q.** Again, based on the evidence, right?

18 **A. (Nods head.)**

19 **Q.** And that's a juror's job --

20 THE REPORTER: Your answer?

21 THE WITNESS: Yes.

22 **Q.** (BY MR. GILL) And that's a juror's job
23 throughout the course of a criminal trial, is to base
24 their decisions on the evidence and upon the law that
25 they're given by the judge.

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33

1 Would you be able to follow your oath as
2 a juror and follow the laws as the judge gives it to
3 you?

4 **A. Yes.**

5 **Q.** Is there anything you've heard about here
6 today that -- that you have an -- have an issue with
7 or have a question about?

8 **A. No.**

9 **Q.** Because this is just about it. We've been
10 through the whole capital murder death penalty
11 statutory scheme here. This is your job as a juror.

12 **A. I understand.**

13 **Q.** So now knowing everything that you'd be called
14 upon to do as a juror, is there any reason you can
15 think of, whether it's moral, ethical or religious,
16 you could not be a part of the process that would
17 result in someone receiving the death penalty?

18 **A. No.**

19 **Q.** Thank you very much for your time, Mr. Dennis.

20 **A. Thank you.**

21 MR. GILL: That's all we have, Your
22 Honor.

23 THE COURT: Defense?

24 **VOIR DIRE EXAMINATION BY THE DEFENDANT**

25 BY MR. CUMMINGS:

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34

1 **Q.** Good morning, Mr. Dennis.

2 **A. Good morning.**

3 **Q.** I'm Fred Cummings, this is Larry Moore and
4 Pamela Fernandez, and this is our client, John Hummel.

5 I want to take about the same amount of
6 time that Mr. Gill took this morning to hopefully just
7 kind of carry on a conversation with you.

8 **A. Okay.**

9 **Q.** We're close to having a jury and you're very
10 close to being on it. Okay. How does that make you
11 feel?

12 **A. Really, the way -- if -- I mean, I feel**
13 **this -- I'm supposed to -- it's supposed to be my**
14 **service. I'm supposed to do it, so if I'm called to**
15 **do it, I'll do it. If not, I'll go back to work.**

16 **Q.** You, 20 years ago in Los Angeles, were on a
17 jury?

18 **A. Yes.**

19 **Q.** Can you tell me about that experience?

20 **A. It was a murder trial. It lasted about -- I**
21 **guess about four weeks. It was a long process. You**
22 **know, certain things were interesting. Didn't take**
23 **anything bad from it.**

24 First time I actually saw how the court
25 system really worked, and nothing negative in the

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35

1 way -- as far as against the lawyers or how, you know,
2 it was conducted. So it was an interesting
3 experience.

4 **Q.** There have been some -- over the years some
5 highly publicized trials out in California, and Texas
6 lawyers have difficulty understanding how -- why it
7 takes them so long in California to try a case.

8 Did you -- Did you-all work full days for
9 those four weeks?

10 **A. No, because sometimes we would come in the**
11 **court and we'd be sitting out waiting for them to call**
12 **us in and they would come and tell us to go home.**
13 **Might have had something else on the docket or**
14 **sometimes we would come in and -- they wouldn't have**
15 **us come in until ten and then we'd go right back out**
16 **to lunch at 12, then leave court at two, so...**

17 **Q.** Now, that's been my suspicion. This case will
18 be tried probably in two weeks. It might be a little
19 more. It might be a little less. Typically, our
20 judges give deference to jurors and you take priority.
21 That's -- I believe will be your experience if you're
22 called to serve in this case.

23 I don't think you've got any problems
24 being honest with us. You've asked questions when you
25 needed something clarified. So this slide that I have
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36

1 here as far as the rights of a potential juror is
2 probably unnecessary, but we still have the ability to
3 exercise strikes.

4 And so I'd just kind of like to go
5 through the same information or many of the same
6 things that Mr. Gill went over with you just to be
7 sure I'm comfortable. Okay?

8 **A. Okay.**

9 **Q.** If there's any comment that you want to make
10 or if there's any question that you want to ask,
11 please do so, because as Mr. Gill told you, when we're
12 through this morning, when you and I are done with our
13 conversation, the judge will excuse you and shortly
14 thereafter you'll be called back in and told whether
15 you're going to serve or not.

16 **A. Okay.**

17 **Q.** It will happen today.

18 Just generally, when did you form your
19 opinion regarding the death penalty?

20 **A. Never really. Like I said, I've never really**
21 **thought about it. That's why I say I don't know which**
22 **way I would feel. Like I said, basically, all I do is**
23 **follow the law, you know, what I'm instructed to do.**

24 **Q.** All right. We've gone over the process.

25 We've done it kind of piecemeal in the way we've been
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37

1 doing this particular case with the mini panel and
2 then the individual.

3 These are the elements of capital murder
4 as it applies in this particular indictment. Okay?

5 **A. Okay.**

6 **Q.** It comes out of the Code of Criminal Procedure
7 and the Penal Code, and this is the roadmap that the
8 State has to follow in order to prove their case --

9 **A. Okay.**

10 **Q.** -- to you individually beyond a reasonable
11 doubt. And if they don't follow that roadmap, if they
12 get off track in any way, then they haven't met their
13 burden. And you've already been through this process
14 once before and you know the proper verdict in that
15 case.

16 **A. Yes.**

17 **Q.** But have you got any questions about capital
18 murder as it applies to this particular indictment?

19 **A. No.**

20 **Q.** Are you comfortable with what they're being
21 required to prove?

22 **A. Yes.**

23 **Q.** All right. On or about a particular date in
24 Tarrant County, Texas, the person they have accused
25 knowingly caused the death of one individual, and they

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38

1 have to tell you how that death occurred, and that
2 would be called the manner or means.

3 And then what makes it capital as opposed
4 to a regular murder, they have to allege -- or excuse
5 me -- they have to prove that what they have alleged,
6 that it occurred during the same criminal transaction
7 with another knowing murder.

8 **A. Yes.**

9 **Q.** Okay. If the jury decides that that is the
10 case, same criminal transaction, two murders, then
11 you'll be dealing with the punishment range for
12 capital murder. That punishment range only applies to
13 capital murder. Okay?

14 **A. Okay.**

15 **Q.** The first-degree felony, which applies to a
16 single murder and several other felonies, high-level
17 felonies, is 5 to 99 or life, but that life has the
18 possibility of parole.

19 **A. Okay.**

20 **Q.** Capital life is life without parole. And I
21 know it's in your questionnaire. You indicated that
22 you accept if an individual -- if you say life without
23 parole, he'll never get out.

24 **A. Yes.**

25 **Q.** Okay. And you picked up on the reality of

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39

1 this. If a jury decides beyond a reasonable doubt,
2 each individual -- each of the individual jurors, all
3 12, say guilty, that individual is never going home.
4 He's going to die in the penitentiary.

5 **A. Yes.**

6 **Q.** It's either going to be natural causes or some
7 date certain in an execution.

8 **A. Yes.**

9 **Q.** Okay. And you obviously understand the
10 gravity of this.

11 **A. Yes.**

12 **Q.** All right. The process is one in which
13 Mr. Gill went over with you. I've kind of summarized
14 it on this slide. The 12 of you have to decide guilty
15 of capital murder.

16 And then if you've done that, there is a
17 punishment phase. Mr. Gill talked about the bad
18 things that could be introduced at the punishment
19 phase. You're going to hear the good things as well.

20 If there is a prior criminal history,
21 they get to introduce it. If there isn't, you
22 obviously are not going to hear about any prior crime.
23 You may very well hear about the good things that the
24 individual has done in their life in an effort to give
25 you the total picture so you can make this very

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40

1 important decision. Okay?

2 **A. Okay.**

3 **Q.** You -- The process is that you just don't go
4 back there and make a decision for one punishment
5 versus the other. You're called upon to answer these
6 questions. And then as a result of those questions,
7 you know what the results will be. There is some
8 structure to it.

9 **A. Yes.**

10 **Q.** Okay. So it takes essentially 36 votes, three
11 by each -- three from each of the jurors: Guilty, yes
12 as to future dangerousness question and no as to the
13 mitigation question.

14 And if that is the way things progress,
15 if that's the decision of each of you, then a death
16 sentence results. Okay?

17 **A. Yes.**

18 **Q.** But the presumption here is life. They've got
19 to meet their burden as far as guilty in that first
20 special issue and you've got to decide there is no
21 reason not to assess the death sentence or else a
22 death sentence results. Okay?

23 **A. Okay.**

24 **Q.** Any questions about that process?

25 **A. No.**

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41

1 **Q.** Special Issue No. 1 is straight out of the
2 Code of Criminal Procedures. So make yourself
3 comfortable. That's the same language that Mr. Gill
4 put before you.

5 And he talked to you or with you about
6 some of the terminology in this question to establish
7 his own comfort level as to what your comprehension or
8 understanding of these terms are. And I had the
9 benefit of listening to that and I don't have any
10 problem with the conversation you-all had about that.

11 What sort of evidence would you want to
12 hear in order to make this kind of decision or make
13 this -- this kind of decision?

14 **A. Well, past acts. Like I said, his past, what**
15 **he -- you know, what he violated before, did he have**
16 **allegations of it before, was he ever convicted of**
17 **anything like that before, things of that nature.**

18 **Q.** Okay. Prior history. Would you find any sort
19 of expert testimony persuasive or not?

20 **A. As far as if an expert is assuming or giving**
21 **facts?**

22 **Q.** Experts are able to give you opinions based
23 upon, hopefully, facts. And you'll hear as many or
24 more from the State as you may hear from us. Okay?
25 But I'm just curious. You've been through this

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42

1 before. You're a knowledgeable man.

2 Is that going to -- Is that the sort of
3 thing that would be helpful?

4 **A. Well, I would have to weigh it when I hear it.**
5 **I don't -- not necessarily because it's an expert that**
6 **I would kind of go his way or believe that if he's**
7 **making an assumption or something, that could possibly**
8 **happen.**

9 Like I said, there will be other things
10 given to us, like I said, basically, how he was
11 before, which is fact versus what an expert might
12 assume.

13 Like I said, I'd have to weigh it as it
14 came. I couldn't just because he's an expert say,
15 yes, to follow that. Like I said, basically what you
16 bring in his past, if he's done things toward that
17 nature before, then depending on what the expert says,
18 I'll have to balance it.

19 **Q.** Okay. The burden is on them. As far as this
20 question is concerned, I want to be sure that you
21 understand the process and set the context you're
22 going to be answering that question in.

23 In order to -- Before you see Special
24 Issue No. 1, you're going to have decided beyond a
25 reasonable doubt that a capital murder has occurred.

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43

1 So that's going to be the knowing commission of two
2 murders.

3 There's not any defenses. It's not an
4 accident. There's not any mental issues such as
5 insanity or mental retardation that might impact your
6 decision. It's a -- You're going to -- You have
7 decided beyond a reasonable doubt that capital murder
8 has occurred.

9 It's only then that you'll be called upon
10 to answer this question. Okay? You might take into
11 consideration, and you probably will take into
12 consideration, what you've heard in the
13 guilt/innocence phase of the trial as far as the
14 accusation in the indictment.

15 But do you see this as asking you for
16 more or asking you to make a different evaluation?

17 **A. Basically asked me to use my judgment. Like I**
18 **said, just use my judgment and maybe just experience**
19 **from my life, things that, you know, we go through and**
20 **things we see.**

21 **Q.** This Special Issue No. 2, when you get here,
22 the progression is that you've already found, each of
23 the 12 of you, beyond a reasonable doubt guilt and
24 you've already found, each of the 12 of you, beyond a
25 reasonable doubt that Special Issue No. 1 is true, or

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44

1 yes is the proper response.

2 You've indicated the history and
3 background and kind of a track record of the
4 individual is going to be important to you, correct?

5 **A. Yes.**

6 **Q.** Are you going to be able to make this
7 evaluation, take this one final look?

8 You've already decided in this situation
9 not only the things that I put on the slide before you
10 prior to Special Issue No. 1, but you've already
11 decided this gentleman is, in your opinion, beyond a
12 reasonable doubt a future danger. Okay?

13 **A. Okay.**

14 **Q.** Will you give consideration to mitigating
15 evidence and evaluate this question?

16 **A. Yes.**

17 **Q.** You see how it's kind of a -- Oh, I've heard
18 it described as a safety net. It's one final look at
19 the total picture to make a -- kind of a gut check,
20 kind of a is it really appropriate to assess death?

21 **A. Yes, I believe so.**

22 **Q.** You think this is a process that you can
23 participate in?

24 **A. Yes.**

25 **Q.** You've given it some thought since we've had

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45

1 you up here last, at least that's what I kind of
2 picked up when you were talking with Mr. Gill, have
3 you not?

4 **A. Yes.**

5 **Q.** You said something when you were talking with
6 Mr. Gill about being important to know why it was
7 done, and, of course, that's not part of the proof.
8 But when you -- when we talk about mitigation, and I
9 actually have a definition, it's a little broader than
10 that. Can you see that?

11 **A. Yes.**

12 **Q.** My concern with that comment you made is, is
13 that based upon this definition and your comment that
14 you might consider mitigation only as it applies to
15 the offense. Is that a fair statement or --

16 **A. I'm not understanding your question.**

17 **Q.** I don't blame you. I mean, we've been doing
18 this so long, we're punchy. I'm sorry. That wasn't a
19 very good question. I don't even know if it was a
20 question.

21 There -- Mr. Gill talked to you about
22 age, you know, may be mitigating --

23 **A. Yeah.**

24 **Q.** -- may not be. That obviously is more of the
25 status of the individual, not the offense.

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46

1 **A. Yes.**

2 **Q.** And what I'm trying to find out is if you will
3 give consideration, at least, to anything that you may
4 hear regarding the defendant and whatever evidence is
5 brought to you in the punishment phase to try to get
6 you to take a look at the individual --

7 **A. Yes.**

8 **Q.** -- in addition to the crime.

9 **A. Yes.**

10 **Q.** Okay. Do you think -- When they talk about
11 reducing the defendant's moral blameworthiness, I
12 don't really -- we have asked most jurors what they
13 believe that means, and I don't think we've gotten the
14 same response. I don't know that I could give you a
15 definition of what that means. I guess it's an
16 individual thing.

17 What does that mean to you?

18 **A. Like I said, the reason why he committed this
19 offense.**

20 **Q.** Okay. And that's the concern we have is that
21 you would narrow mitigation to just that. Mitigation
22 is not according to law, or at least there's no tie
23 between the crime and the evidence presented as far as
24 mitigation.

25 So will you accept that and listen?

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47

1 **A. Yes.**

2 **Q.** Okay. What did your mother-in-law do for the
3 Los Angeles Sheriff's Department?

4 **A. She was like a clerk.**

5 **Q.** Did she retire from there?

6 **A. Yes.**

7 **Q.** You worked as a security guard during the
8 Olympics in 1984.

9 **A. Yes.**

10 **Q.** What did you do?

11 **A. I worked at a housing where they kept -- where
12 the athletes stayed, USC.**

13 **Q.** You get any special training in order to do
14 that?

15 **A. No, not really.**

16 **Q.** I'm trying to remember whether the -- the
17 incident in one of the Olympics involving the
18 Israelis. Wasn't that before 1984?

19 **A. That was before.**

20 **Q.** Is that something that you-all were trained
21 about and worried about?

22 **A. No. Because where we were -- like I said, I
23 think our training lasted maybe four or five hours and
24 it was basically just observe, document. We had to do
25 like a daily log. And, like I said, check the**

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48

1 **credentials as the athletes came in and out of the
2 housing.**

3 **Q.** Did -- Were you able to see any of the games?

4 **A. No.**

5 **Q.** No. There wasn't any perks?

6 **A. Pins from different countries. Some of the
7 athletes would give you pins.**

8 **Q.** We had some -- I believe it was gymnastic
9 games here. That's where I learned about the pins.

10 **A. Yes.**

11 **Q.** Swapping the pins and getting you a collection
12 and stuff like that.

13 You indicated that you thought the
14 criminal justice system was broken?

15 **A. Yes, sir.**

16 **Q.** What do you mean by that?

17 **A. Just by how -- like out here, I think you guys
18 have the -- just release the prisoners who have been
19 in jail for 27 years. They say there are more
20 prisoners in jail that might be released or might not,
21 but we don't have the money to check everybody's DNA
22 to see if they're innocent or guilty. So, like I say,
23 I don't believe that's fair.**

24 **Q.** How would that apply to your service?

25 **A. It doesn't. That's a totally different**

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49

1 situation.

2 Q. Okay. Does it give you concern about making
3 sure the evidence is -- is there before you make your
4 decision?

5 A. Yes. That the evidence would have to be
6 there, yes.

7 Q. The last thing I want to talk about is this
8 slide here, and it's really important because I think
9 you're close. I don't know how they'll exercise their
10 decision. You'll know shortly.

11 But you have these rights. You have the
12 right to the truth, the absolute truth. You have the
13 right to your own determination regarding what's
14 mitigation. It takes 12 votes, and that's the
15 protection we have.

16 All 12 -- It's a unanimous situation.
17 It's not like anything else you've done except that
18 experience you had 20 years ago. It's not a majority
19 rules. You're just as powerful -- just as important
20 as any other juror in that room. Okay?

21 A. Okay.

22 Q. You have any questions about that?

23 A. No.

24 Q. Thank you very much for your attention.

25 THE COURT: Mr. Dennis, if you will have
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50

1 a seat out in the front hallway, we will call you back
2 out in just a few minutes.

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: State have a challenge for
5 cause?

6 MR. GILL: No, Your Honor.

7 THE COURT: Defense?

8 MR. CUMMINGS: No, Your Honor.

9 THE COURT: State need to exercise a
10 peremptory?

11 MR. GILL: May we have a moment?

12 THE COURT: Yes. State?

13 MR. GILL: What was the question?

14 THE COURT: Does the State exercise a
15 peremptory?

16 MR. GILL: We do.

17 THE COURT: Would you call him back in,
18 please. All right. Mr. Dennis, you are not going to
19 be remaining as a juror in the case. You don't have
20 to return for any further proceedings.

21 I want to thank you, though, very much
22 for your participation in the process. It's vital to
23 our system of justice. If you will leave that plastic
24 part of your jury badge with the bailiff, the central
25 jury room is going to mail you your jury check.

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51

1 PROSPECTIVE JUROR: Okay.

2 THE COURT: Okay. Thank you very much.

3 PROSPECTIVE JUROR: Thank you.

4 MR. BRISSETTE: Judge, before we call the
5 next one, can we talk to the defense?

6 THE COURT: Yes. Talk to the defense.

7 MR. BRISSETTE: Can we step back in the
8 back?

9 THE COURT: You sure can. Why don't we
10 just take a little break.

11 (Break taken.)

12 (Defendant present.)

13 THE COURT: Okay. On the record.

14 It's my understanding that the parties
15 have agreed to excuse Jurors 133 and 138; is that
16 correct?

17 MR. BRISSETTE: Yes, Your Honor.

18 THE COURT: Is that correct,
19 Mr. Cummings?

20 MR. CUMMINGS: Yes. And I've spoken to
21 Mr. Hummel and he's in agreement with that, Your
22 Honor.

23 THE COURT: Is that correct, Mr. Hummel?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. I need to bring in 133
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52

1 because he is the juror who is currently on bond for
2 potential contempt charges for failure to appear at
3 the mini panel. So if you'll bring him in, please.

4 THE BAILIFF: Bring him all the way up?

5 THE COURT: You can just have him stand
6 at the gate right there. Okay. Right there.

7 Mr. Nikko Martinez; is that correct?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: And, Mr. Martinez, you
10 appeared in front of Judge Gonzalez and he placed you
11 on bond for your failure to appear at the mini panel
12 interview that was conducted in this case; is that
13 right?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Did you get taken into
16 custody by the bailiffs?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: And how did you make a bond?

19 PROSPECTIVE JUROR: My -- I got bonded
20 out. I don't know if my uncle or my dad bailed me
21 out.

22 THE COURT: Okay. Did they pay a
23 bondsman or did they pay a cash bond?

24 PROSPECTIVE JUROR: I'm not too sure. I
25 don't really know. I think it was a bondsman.

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53

1 THE COURT: So you haven't had any
 2 out-of-pocket expenses for --
 3 PROSPECTIVE JUROR: Well, it's -- it was
 4 a bondsman. His name is David --
 5 MR. CUMMINGS: -- Gallagher?
 6 PROSPECTIVE JUROR: I'm not sure what the
 7 name is.
 8 THE COURT: Okay. Are you going to pay
 9 your uncle or your dad back for the money that they --
 10 PROSPECTIVE JUROR: Yes.
 11 THE COURT: -- paid the bondsman?
 12 PROSPECTIVE JUROR: Yes.
 13 THE COURT: Okay. Do you know how much
 14 that is?
 15 PROSPECTIVE JUROR: I think it was 50 for
 16 the --
 17 THE COURT: Okay. Well, that's not very
 18 much money. But I'm assuming that being taken into
 19 custody and having to appear in front of Judge
 20 Gonzalez made an impression on you on how important
 21 this is?
 22 PROSPECTIVE JUROR: Yes.
 23 THE COURT: Okay. And you have an uncle
 24 who's a deputy sheriff, right?
 25 PROSPECTIVE JUROR: Yes.
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54

1 THE COURT: Okay. Well, it is important,
 2 and this case is of particular seriousness. And so
 3 that's why your not showing up when you were supposed
 4 to has been taken so seriously.
 5 PROSPECTIVE JUROR: I just -- I mean, I
 6 forgot all about it. I was at work.
 7 THE COURT: Okay. Well --
 8 PROSPECTIVE JUROR: I just -- I mean, I
 9 had just got this new job and I work ten-hour days and
 10 I just forgot all about it.
 11 THE COURT: Okay. Well, I'm -- I'm going
 12 to not punish you any further than you've already been
 13 punished. Okay?
 14 PROSPECTIVE JUROR: Thank you.
 15 THE COURT: You're going to be released
 16 as a potential juror and you're also going to be
 17 released from any further liability on your bond. The
 18 bondsman's not going to give you your money back, but
 19 you're not going to be on bond any more. Okay?
 20 PROSPECTIVE JUROR: Okay.
 21 THE COURT: But just let that be a lesson
 22 to you to --
 23 PROSPECTIVE JUROR: Yes.
 24 THE COURT: -- how serious that is.
 25 Okay?
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55

1 PROSPECTIVE JUROR: Uh-huh.
 2 THE COURT: All right. Well, you can go
 3 for today and you don't have to come back any more on
 4 this case.
 5 PROSPECTIVE JUROR: Okay. Thank you.
 6 THE COURT: Okay. Thank you. 134.
 7 THE BAILIFF: 134 is here.
 8 THE COURT: Okay. We're ready. You're
 9 going to sit right up here in this green chair,
 10 please.
 11 PROSPECTIVE JUROR: Good morning.
 12 THE COURT: Good morning. You are
 13 Potential Juror No. 134, Maria Ruiz; is that correct?
 14 PROSPECTIVE JUROR: That is correct.
 15 THE COURT: All right. Ms. Ruiz, I need
 16 for you to raise your right hand, please.
 17 (Prospective juror sworn.)
 18 THE COURT: Okay. You're going to need
 19 to either scoot up or move that microphone because
 20 everybody is going to need to be able to hear you.
 21 It's a little nerve racking being up there all by
 22 yourself, but you're the 134th person that we've
 23 talked to and everybody has been nervous to sit in
 24 that seat.
 25 Okay. This is your individual interview.
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56

1 The attorneys for both sides in this case are going to
 2 have the opportunity to talk to you today about some
 3 legal issues, some questions off your jury
 4 questionnaire and the death penalty. Okay?
 5 PROSPECTIVE JUROR: Okay.
 6 THE COURT: You'll recall that the person
 7 on trial is John William Hummel, and he is represented
 8 by Fred Cummings, Larry Moore and Pamela Fernandez,
 9 and the State of Texas is represented by Miles
 10 Brissette and Robert Gill.
 11 Has anything changed since you filled out
 12 your jury questionnaire about a month ago that would
 13 affect your ability to serve in this case?
 14 PROSPECTIVE JUROR: No.
 15 THE COURT: Has anything about your
 16 schedule changed since we talked to you at the mini
 17 panel discussion that would affect your ability to
 18 serve?
 19 PROSPECTIVE JUROR: No.
 20 THE COURT: Okay. Well, it's going to
 21 take about an hour for both sides to talk to you.
 22 There's water right here in this pitcher if you're
 23 thirsty. Okay?
 24 PROSPECTIVE JUROR: Okay.
 25 THE COURT: All right. State, you may
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57

1 proceed.

2 MR. GILL: Thank you, Judge.

3 MARIA RUIZ,

4 a prospective juror, having been first duly sworn,

5 testified as follows:

6 **VOIR DIRE EXAMINATION BY THE STATE**

7 BY MR. BRISSETTE:

8 Q. Good morning, ma'am. How are you?

9 A. Okay. Thank you.

10 Q. We're going to go over a little bit about your
11 questionnaire first and then talk to you about some of
12 the laws that applies in a punishment phase of a
13 capital case.

14 Did you have a chance to study your
15 homework assignment the judge gave you a couple weeks
16 ago?

17 A. I didn't.

18 Q. Okay. So as we go through some of this, you
19 have raised five children? Yes?

20 A. Yes. Five.

21 Q. Congratulations, ma'am.

22 A. Thanks.

23 Q. Was it difficult to keep all five in line as
24 they were growing up?

25 A. Not so much. They're good kids, so...

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58

1 Q. Your husband works as a mechanic for the
2 federal government, for the postal service?

3 A. Yes.

4 Q. How long has he worked for the federal
5 government?

6 A. Well, I guess since '98, '99 for the post
7 office, but he was active duty in the Army since 1989
8 or '90.

9 Q. And what does he do? He's a reservist now in
10 the Army, is he not?

11 A. Yes, sir. Yes, sir.

12 Q. What does he do in the Army?

13 A. I'm not sure.

14 Q. Do you know his rank?

15 A. E-7.

16 Q. E-7?

17 A. Yes.

18 Q. Has he been deployed overseas as part of the
19 ongoing operations?

20 A. Yes. 2005 he was in Iraq and, I think, 2008
21 in Oklahoma for a year each time.

22 Q. Oklahoma?

23 A. Uh-huh.

24 Q. Does he work with a particular deal? Is he
25 with the tanks or is he with artillery?

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59

1 A. Well, heavy equipment.

2 Q. Is he a mechanic then with them as well?

3 A. Yes.

4 Q. Does he enjoy his work with the military?

5 A. Yes, he does.

6 Q. He also -- He also was a -- tried to apply at
7 the Fort Worth Police Department at one point?

8 A. Yes.

9 Q. What was his interest in the police
10 department?

11 A. He just likes that job, helping people.

12 Q. And he chose to go with the postal service
13 instead?

14 A. Yes.

15 Q. Some would say that's a safer job?

16 A. I guess.

17 Q. And I notice that you were born in Mexico?

18 A. Yes, I was.

19 Q. And when did you become a United States
20 citizen?

21 A. Maybe -- I guess four years ago.

22 Q. What's your favorite Disney movie?

23 A. I guess, Bambi.

24 Q. Is there a particular place that you like
25 playing bingo at?

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60

1 A. Yes.

2 Q. Which bingo hall is your favorite?

3 A. Over there on Carson Street, Haltom City.

4 Q. The -- You have a sister that is married to a
5 person that's been in some trouble?

6 A. Yes. My brother-in-law is in jail right now.
7 DUI.

8 Q. Is he -- You listed on your questionnaire
9 that -- is your brother-in-law, has he been violent
10 towards your sister?

11 A. Yes.

12 Q. Is that the domestic violence that's listed in
13 your questionnaire?

14 A. No. That happened to me.

15 Q. This is -- is quite an intimate room we can
16 get with the number of people that are here.

17 The domestic violence that you received,
18 was that from your husband?

19 A. Yes.

20 Q. Was he charged here in Tarrant County?

21 A. Yes.

22 Q. What was the outcome of that prosecution?

23 A. He just had to go to some classes.

24 Q. How long ago was that?

25 A. Maybe ten years ago.

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61

1 Q. Did you have to go to a particular court ten
2 years ago? Did you have to go to classes as well?

3 A. No. I don't -- I don't think so.

4 Q. Did you have to come down and meet with
5 anybody in this building to talk about the case?

6 A. I really don't remember if I came to court or
7 just went to the lawyer's office.

8 Q. Were you wanting the case to be dismissed
9 after he took the classes?

10 A. Yes.

11 Q. Because you understand that ten years ago,
12 that would have been the office that I work at?

13 A. Oh.

14 Q. The district attorney's office would be the
15 one prosecuting your husband back then.

16 A. Uh-huh.

17 Q. It may have included -- back then I was in the
18 domestic violence unit. It may have been myself and
19 others that are here in the courtroom that were the
20 prosecutors back then in that -- on that team.

21 A. I don't think it went to trial.

22 Q. Okay.

23 A. I'm not sure.

24 Q. Was it something that you wanted to be
25 dismissed?

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62

1 A. Yes, because he went to classes.

2 Q. Have things gotten better?

3 A. Yes.

4 Q. Would you hold any of that against the State
5 of Texas for us being the -- we represent all the law
6 enforcement when it comes to court.

7 So you understand that my office, the
8 office that Mr. Gill and I work for, would have been
9 the ones prosecuting that case. Any problems with
10 that?

11 A. No.

12 Q. The case that your brother-in-law is currently
13 in jail for, is he in jail here across the street?

14 A. I'm not sure because they moved him from one
15 jail to another one. So right now I don't know where
16 he is at.

17 Q. But is it here in Fort Worth, though?

18 A. Yes.

19 Q. And you understand that would be our office as
20 well?

21 A. Yes, sir.

22 Q. Any issues with us prosecuting your
23 brother-in-law for the DWI and the domestic violence
24 against your sister?

25 A. No, because I think he's where he's supposed

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63

1 to be right now.

2 Q. And I forgot to mention earlier. We're going
3 to have some stuff show up here on the screen. You
4 understand that the only oath you're under right now
5 is simply to tell us the truth?

6 A. Yes.

7 Q. Whatever your feelings are, we're going to
8 talk about them. Let us know -- that way everybody
9 can make an informed decision. Okay?

10 A. Okay.

11 Q. So when we started at the back of your
12 questionnaire, we got into topics that talked about
13 the death penalty and capital punishment.

14 As we go through those, you had to fill
15 this out in a vacuum. Think back about six weeks ago
16 when you filled this out and you were hustled into
17 that big room and nobody really told you what was
18 going on until Judge Gonzalez said that this was going
19 to be a capital murder case.

20 And then we gave you the questionnaire,
21 but we really didn't tell you what -- how to -- how
22 the law actually worked and you had to fill this out
23 in a vacuum.

24 You have a question here that, Are you
25 generally in favor of the death penalty as punishment

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64

1 for capital murder, and you checked yes.

2 Anybody that takes a life don't deserve
3 to live is your answer. And you've had a chance to
4 listen to Mr. Gill and Mr. Cummings when we talked to
5 you in the larger group, not the biggest group, but
6 the 50-person group.

7 A. Uh-huh.

8 Q. You understand that there's different
9 elements, different procedures for a capital crime.
10 So it's not available for all murders.

11 A. Uh-huh.

12 Q. So you understand that now?

13 A. Yes, I do.

14 Q. Does that help answer some of your questions
15 and maybe change some of your answers here that --
16 capital crime, you have to go through certain
17 procedures and steps to qualify for a capital offense?

18 A. Uh-huh.

19 Q. And the death penalty is only available for
20 those type of crimes?

21 A. Uh-huh.

22 Q. Does that make some sense?

23 A. Yes.

24 Q. Does that make sense now when you look at your
25 answer that you may have to reserve the capital

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65

1 punishment for --

2 THE REPORTER: I'm sorry.

3 THE COURT: Okay. Ma'am, if you will
4 just wait. He has to finish his question before you
5 start answering, because she has to type everything
6 down.

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: Okay. Thank you.

9 Q. (BY MR. BRISSETTE) My fault. So as we look
10 at this, that's what we're going to go through this
11 morning as part of this -- because if you take an oath
12 as a juror, that's the second oath.

13 If you're selected as a juror in a case,
14 you have to render a verdict that's based on the law
15 and the evidence. So this morning we want to
16 understand what your feelings are. We want to
17 understand your feelings on the capital punishment, on
18 murder and on capital punishment. We'll go through
19 both.

20 But if you're selected as a juror, the
21 law says you have to set all your personal feelings
22 aside and keep an open mind and follow the law. The
23 judge is going to give you the law in the case.

24 Mr. Gill talked to you a couple weeks ago
25 about the Court's charge. The judge prepares a

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66

1 document, and it won't be 26 pages -- It might be
2 long, though -- and it lays out all the law that the
3 jury would take back with them to the jury room to
4 deliberate a case.

5 So your second oath, if you're selected
6 as a juror, is that you're going to render a verdict
7 that's based on the law that the judge gives you. And
8 you take the law the judge gives you and you apply it
9 to everything you've heard as a juror.

10 So all the exhibits that come in, all the
11 testimony that you hear from the witness stand, just
12 like what you're sitting at now, that's how you work
13 through this. And the law asks you to keep an open
14 mind and wait until all the evidence comes in before
15 you make a decision.

16 Does that make some sense?

17 A. Yes.

18 Q. Do you think you could do that?

19 A. Yes, I can.

20 Q. It's a pretty simple concept, but in -- just
21 in thought, but applying it takes a different
22 approach. You got to keep an open mind to follow your
23 oath as a juror. And based on your oath as a juror,
24 render the facts in the case and judge them and go
25 through them.

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67

1 Does that make some sense?

2 A. Yes, it does.

3 Q. First question of the day for you: Is there
4 any reason, be it moral, ethic or religious, you
5 cannot be part of a process that results in a death
6 penalty?

7 A. No.

8 Q. When we're talking about a capital crime, the
9 law that we're talking about in this case is what's on
10 the screen now: A person commits capital murder when
11 he knowingly murders more than one person during the
12 same criminal transaction. So there's two homicides
13 during the same criminal transaction.

14 Now, if you recall from what Mr. Gill
15 talked to you about a couple weeks ago, when Bob was
16 up, the words that aren't defined in the penal code,
17 like "same criminal transaction."

18 A. Uh-huh.

19 Q. You get to apply what it means in your normal,
20 everyday life; what the word "transaction" means, what
21 the word "sane" means to you. And you get to come up
22 with what the definition is in your own mind for that
23 phrase. Okay?

24 A. (Nods head.)

25 Q. Some examples of that that we've talked about
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68

1 here to the first 133 folks that have been through
2 here, "same criminal transaction" may be when the
3 federal building up in Oklahoma City was blown up back
4 in the '90's.

5 That was one bomb that took out a lot of
6 folks.

7 A. Uh-huh.

8 Q. Other examples have been where we have had,
9 you know, massive shootings where people go in -- like
10 when the church was shot here in Fort Worth -- where
11 people go in and people were shot in different parts
12 of the church. It wasn't all the same room.

13 Or we have an individual that gets upset
14 at somebody else, a couple of his buddies, and goes
15 across town and may shoot one person in one part of
16 Fort Worth and they drive to the other part of Fort
17 Worth and shot another buddy because he's mad at them
18 because they cheated on him, took some money from him.

19 Those are just examples that have been
20 around, but it's up to you and what you decide what
21 "same criminal transaction" means to you. Okay?

22 A. Okay.

23 Q. But that brings up an important point of what
24 the State has to do. Remember when you take that
25 second oath to follow the law, the State brings forth,

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69

1 if you'll recall, an indictment in a case, and that
2 puts the defendant on notice for what they're being
3 charged with.

4 **A. Uh-huh.**

5 **Q.** And we have to list out all the elements of
6 the offense in there. And one of the elements is what
7 they call a manner and means element. And what that
8 is, is if -- it's a homicide case and I say that, the
9 defendant on or about a certain date did knowingly
10 kill an individual by shooting him with a firearm.

11 The manner and means of the death was
12 shooting with a firearm. Okay?

13 **A. Okay.**

14 **Q.** That's in the indictment. At trial the
15 testimony doesn't bear that out. At trial it bears
16 out that the person wasn't shot with a firearm. They
17 were stabbed with a knife. Okay?

18 **A. Okay.**

19 **Q.** Words have meaning in a courtroom, especially
20 words that the State of Texas chooses to put in an
21 indictment.

22 So if the indictment said, shot with a
23 firearm, and it was proven that they were stabbed with
24 a knife, the jury has no choice but to find the
25 defendant not guilty, do they?

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70

1 **A. Yes.**

2 **Q.** Because the words have meaning and the State
3 chose the wrong words. Person may be guilty as all
4 get out for the homicide, but the State didn't live up
5 to its burden by meeting the elements beyond a
6 reasonable doubt.

7 Does that make some sense?

8 **A. Yes, it does.**

9 **Q.** And as a juror, when you take that second
10 oath, you have to -- despite what you think is fair.
11 The fair thing is to find a defendant not guilty. You
12 may be very upset at the DAs that were trying the case
13 and call their boss or go to the media and tell them
14 what a lousy job we did, but the tie goes to the
15 runner and that's how our system works.

16 Do you agree with that?

17 **A. Yes.**

18 **Q.** If you took an oath as a juror, do you think
19 you could obey the rules and follow the law in that
20 case?

21 **A. Yes.**

22 **Q.** Now, the same holds true with what Mr. Gill
23 talked to you about when he talked about witness
24 statements or statements made by a particular -- the
25 defendant.

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71

1 **A. Uh-huh.**

2 **Q.** Remember that the police have to follow
3 certain procedures to take a statement from somebody
4 that's in custody. Okay?

5 **A. Yes.**

6 **Q.** And if they don't do that right, the rules say
7 you have to disregard that statement and not use it in
8 your evaluation of whether or not the State met its
9 burden of proof.

10 Now, that could be just as difficult as
11 looking at the two manner and means, but if that is an
12 issue, the Court's charge will have the instructions
13 on how to do that in the charge.

14 Is -- your oath as a juror, you would
15 have to follow those instructions. And if the State
16 didn't meet their burden in how they got the
17 statement, you would have to disregard that statement
18 and render your verdict based on the other evidence.

19 Can you do that? Can you follow that
20 law?

21 **A. Yes.**

22 **Q.** The other part of this is when we're talking
23 about reaching a guilt/innocence verdict. Remember
24 that if we don't prove that it's the same criminal
25 transaction to you, it still may be homicide, but it

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72

1 may not be part of the same criminal transaction.

2 That's a regular murder.

3 **A. Okay.**

4 **Q.** You remember us talking about that?

5 **A. Yes, I do.**

6 **Q.** And a regular murder has a punishment range of
7 5 to 99 years or life. Remember when Mr. Gill talked
8 to you about -- that the low end of the punishment
9 range could be reserved for some crime. And then the
10 high end, that you have to look at the facts first?

11 **A. Yes, I remember.**

12 **Q.** And I don't know if it was clear, and
13 sometimes it isn't, and I want to make sure it is.
14 When you're looking at the punishment range for a
15 case, whether it's the capital phase we're going to
16 talk about here in a second or a phase for a regular
17 homicide, you already found that individual guilty of
18 that crime.

19 So that information that you use to find
20 the person guilty of the homicide, if we're talking
21 about 5 to life, you found the person guilty, so you
22 have some information at that point.

23 Now, you can decide that this case merits
24 a low end of the punishment range or it's a case that
25 it's the most heinous you can think of and it needs

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73

1 the upper end of the punishment range, but the law
2 requires you as a juror to keep an open mind and
3 consider both. Okay?

4 **A. Okay.**

5 **Q.** It doesn't tell you how long you have to
6 consider it. It just says you have to consider it.
7 In your consideration, you apply the facts that you've
8 gathered throughout the case and then you make an
9 informed decision as to the appropriate punishment.

10 Can you do that?

11 **A. Yes, I can.**

12 **Q.** The question always goes: If the facts
13 justify it, the facts being the evidence, and the law
14 allows it, which is that range, can you give full and
15 fair consideration to the range of punishment?

16 And I think what you're saying is: Yes.
17 You could follow your oath as a juror and keep that
18 open mind?

19 **A. Yes.**

20 **Q.** When we're talking about evidence at a
21 punishment phase, whether it's a regular homicide case
22 or a capital case, the State -- as I just said, you
23 can take all the evidence you've heard at the first
24 phase and consider that, but the State can bring you
25 additional evidence at the punishment phase.

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74

1 We can bring you evidence of bad
2 character or bad reputation of a defendant that we
3 were not allowed to talk about during the
4 guilt/innocence phase, the first phase of the case.

5 There may be other crimes a particular
6 person has done that weren't in that indictment that
7 would be read to the jury that we can bring up in the
8 punishment phase as well and prove up additional
9 crimes.

10 Does that make some sense?

11 **A. Yes.**

12 **Q.** So when you go back for the second
13 deliberation -- I know you read your homework
14 assignment -- those two questions, the two special
15 issues that we have to deal with, we have shorthand
16 versions of them here called future dangerousness,
17 which is Question No. 1, and sufficient mitigation for
18 a life sentence.

19 And depending on how a jury answers those
20 two questions tells the judge how to sentence a
21 particular defendant. I know you had in your
22 questionnaire that Question No. 34: You want to serve
23 as a juror on the case, and you checked no.

24 You know it's not really a volunteer
25 service like the military right now. People really

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75

1 don't want to come down to jury duty.

2 Does that make some sense?

3 **A. Yes.**

4 **Q.** I know you're doing your civic duty. And I
5 know that you put on here that I wouldn't like to have
6 somebody's fate in my hands. And you understand
7 that -- you know the answer -- the outcome to your --
8 how you answer the questions, but, ultimately, it's
9 the judge that does the sentencing.

10 Does that make some sense?

11 **A. Yes, it does.**

12 **Q.** What are your thoughts on that?

13 **A. Well, I think the judge has more knowledge,
14 that's why he's a judge -- or she's the judge, and I
15 respect her for that.**

16 **Q.** Okay. But you understand that how you answer
17 the questions, the judge has to follow what you --
18 what you -- the jury recommends, if you're on the
19 jury?

20 **A. Yes.**

21 **Q.** So you're simply answering two questions
22 independently because you have to vote each time after
23 each question?

24 **A. Yes.**

25 **Q.** And it depends on how you -- how you as a
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76

1 jury, if you were on the jury, vote for those
2 questions determines what the judge has to do.

3 Does that make some sense?

4 **A. Yes.**

5 **Q.** The jury is not actually sentencing the
6 person. The judge is just reading what the jury has
7 put forth and deciding based on how that sequence
8 comes out what takes place.

9 Does that make some sense?

10 **A. Yes.**

11 **Q.** Do you have any concerns that you would have
12 any trouble doing any of that, answering the two
13 questions?

14 **A. No.**

15 **Q.** Anybody on the ground behind me?

16 **A. No.**

17 **Q.** Okay. The judge would instruct you, if you're
18 on the jury, that a sentence of life without parole
19 means that a defendant is ineligible from release from
20 prison on parole.

21 So if you find a person guilty of capital
22 murder in the State of Texas under the definition we
23 gave you, you've already found that they've committed
24 two homicides during the same criminal transaction, so
25 they've killed two people, there's two options for --

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77

1 legally left in their life.

2 They're either going to spend the rest of
3 their life in prison and die of natural causes or
4 they're going to be executed by the State of Texas at
5 some point in time.

6 Does that make some sense?

7 **A. Yes.**

8 **Q.** So, like, you just keep that in the back of
9 their mind, that they're not going to be out on the
10 streets again, as we go through and look at these
11 questions.

12 Special Issue No. 1. Give you a second
13 to look over that and refresh your memory. So the
14 folks down in Austin that got called back into special
15 session this week, they're the ones that came up with
16 these two questions and they could have chosen any
17 words that they wanted to put in here.

18 And the first word I want to go over with
19 you here is "probability." They could have put
20 absolute certainty in here. They could have put the
21 lower end possible in here, but they put probability
22 in here.

23 Do you have an everyday meaning for
24 probability in your life?

25 **A. Well, like I tell the kids, if they do**

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78

1 **something bad --**

2 **Q.** There's a probability --

3 **A. Yes.**

4 **Q.** -- that something bad's going to happen to
5 them?

6 **A. Yes.**

7 **Q.** Okay. And it's -- it's one where you've got
8 to put your everyday meaning to it. It's not an
9 absolute certainty.

10 Would you agree with that?

11 **A. Yes.**

12 **Q.** And someone said that it's more likely than
13 not. It's greater than possible. But you have to --
14 when you're looking at this, would you agree with me,
15 you have to size up and look at everything as you're
16 looking at the questions, because you had a chance to
17 read over them and reflect on them before you came to
18 court, didn't you?

19 **A. Yes.**

20 **Q.** Criminal acts of violence. Here, once again,
21 they could have put anything they wanted in the
22 legislature. They could have put future homicides,
23 future murders.

24 A criminal act of violence could be an
25 assault such as what you've received in the past.

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79

1 Okay?

2 **A. Uh-huh.**

3 **Q.** Do you see where it could be many different
4 things that -- you know, an act of violence? It's
5 what you yourself -- It's not defined anywhere. So
6 this is one of those that -- where it would be
7 something a juror first themselves have to come up
8 with their own meaning and then collectively as part
9 of a whole, as part of the jury.

10 Does that make some sense?

11 **A. Yes, it does.**

12 **Q.** In your mind, can you think of some criminal
13 acts of violence -- what might be criminal acts of
14 violence?

15 **A. Rape, just robbing a bank.**

16 **Q.** And there could be acts of violence -- would
17 you agree with me that there'd be acts of violence in
18 prison?

19 **A. Yes.**

20 **Q.** And really any place could be turned violent
21 and have a violent act at any time depending on who's
22 in there, right?

23 **A. Right.**

24 **Q.** That's kind of what happens in society.

25 Intersections one day are a peaceful place and the

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80

1 next day there's a gun battle there.

2 You've seen that throughout your life,
3 right?

4 **A. Yes, I have.**

5 **Q.** And when we talk about society in this
6 context -- What does society mean to you?

7 **A. People.**

8 **Q.** People?

9 **A. Anybody.**

10 **Q.** And people could be in prison and people could
11 be out of prison, right?

12 **A. Right.**

13 **Q.** And in our prisons we have people that aren't
14 in trouble working in the prisons, like the guards and
15 stuff like that. Yes?

16 **A. Yes.**

17 **Q.** So you see how society could affect and be
18 more than just prisoners if we're looking at their --
19 if we're looking at this in the context that they're
20 never leaving the penitentiary system, then that has
21 to be part of society or we wouldn't be able to answer
22 the question ever, right?

23 **A. Right.**

24 **Q.** Now, following that oath as a juror to keep an
25 open mind, you have to hold the State, in this

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81

1 question, to its burden of proof that you had during
2 the guilt/innocence phase, whether or not they were
3 guilty of the capital murder.

4 For this Special Issue No. 1, you have to
5 hold the State to its burden of proof. Mr. Gill and I
6 have to prove to a jury beyond a reasonable doubt that
7 a particular person would be a future danger.

8 Does that make any sense?

9 **A. Yes, it does.**

10 **Q.** And the State's only entitled to a "yes"
11 answer from a jury if we prove to the jury unanimously
12 that a person is a future danger.

13 Does that make some sense?

14 **A. Yes.**

15 **Q.** If we don't prove to a jury beyond a
16 reasonable doubt that they are a future danger, what
17 should the jury say?

18 **A. No.**

19 **Q.** No. Knowing that a "yes" answer to that first
20 question would move a defendant one step closer to the
21 death penalty, would you be able to answer "yes" if
22 the State proves to you beyond a reasonable doubt that
23 it should be yes?

24 **A. Yes.**

25 **Q.** The same would hold true if Mr. Gill and I
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82

1 don't meet our burden, we don't prove to a jury beyond
2 a reasonable doubt, would you be able to answer that
3 question no?

4 **A. Yes. I would be able to.**

5 **Q.** And that's part of your oath as a juror, to
6 keep that open mind and make that call at that time,
7 right?

8 **A. Right.**

9 **Q.** Now, I want to make sure we're clear. Do you
10 understand that it takes 36 unanimous votes to reach
11 the death penalty?

12 **A. Yes.**

13 **Q.** And what we're talking about is a jury has
14 already voted 12 to 0 unanimously to find someone
15 guilty. There's a separate vote for Special Issue
16 No. 1. It's not an automatic vote from Special Issue
17 No. 1 from the guilt/innocence phase.

18 You don't vote guilt/innocence guilty,
19 then automatically say yes.

20 **A. Yes.**

21 **Q.** You have to keep that --

22 **A. Sorry.**

23 **Q.** You have to keep that open mind as a juror and
24 take another look at the facts from scratch and look
25 at it. The crime itself may get you to a yes. That's

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83

1 possible under the law.

2 But the law says to be a fair juror and
3 to keep that open mind, you have to look at all the
4 evidence. Can you do that?

5 **A. Yes.**

6 **Q.** And you'll treat Question 1 separate than the
7 guilt/innocence phase?

8 **A. Yes.**

9 **Q.** If a jury answers Question 1 "yes," then we go
10 to Question 2. Question 2. I'll let you read over
11 that again.

12 **A. (Witness complies.)**

13 **Q.** Okay. So they got wordy with the second
14 question. Do you ever wonder why legislation gets
15 long? It's because they have a typewriter that
16 doesn't stop. Okay.

17 But this is an important question. And
18 the first thing you'll notice on this second question
19 is there's no burden on this case on this question.
20 Okay?

21 **A. Okay.**

22 **Q.** The beyond a reasonable doubt is gone. Some
23 would say this is a question that's solely in the
24 jury's province. This is the jury's question. It's a
25 question to give pause, because we already have 24

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84

1 votes that are unanimous. If there's another 12
2 votes, then the death penalty would be imposed. Okay?

3 **A. (Nods head.)**

4 **Q.** This is a question for a jury to take a second
5 and say, let's take some pause here to make sure we're
6 doing justice. Let's look at it. Let's see what
7 there is. Okay?

8 **A. (Nods head.)**

9 **Q.** So as part of this, part of your oath, you
10 have to follow your oath. That's -- It's the simplest
11 thing for the jury, but it's hard sometimes. Your job
12 would be simply to follow your oath and apply the law
13 and the facts. Okay?

14 **A. Okay.**

15 **Q.** So as part of that, the judge would instruct
16 the jury that they shall consider mitigating evidence
17 to be evidence that a juror might regard as reducing
18 the defendant's moral blameworthiness.

19 So for this question, the jury is being
20 asked to look at the case as a whole, the entire case,
21 and see if there's any mitigating evidence. Okay?

22 **A. (Nods head.)**

23 **Q.** If there's any mitigating evidence, the
24 jury -- each juror must make a decision in their own
25 heart and mind if it's a sufficient level of

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85

1 mitigating evidence.

2 Does it reduce the defendant's moral
3 blameworthiness sufficient enough for me to say, Yes,
4 there is something, and a life sentence would be
5 better than the death penalty. Okay?

6 **A. Okay.**

7 **Q.** In your oath as a juror, you have to keep that
8 open mind and be receptive to looking for mitigating
9 evidence.

10 Does that make some sense?

11 **A. Yes, it does.**

12 **Q.** You may not find some, but then, again, you
13 might. And the law contemplates that. And if you do
14 find mitigating evidence, it asks you to give it
15 effect in your mind and see if it's of a sufficient
16 level to warrant an answer of yes to this question.
17 Okay?

18 **A. Okay.**

19 **Q.** Questions on that?

20 **A. No.**

21 **Q.** So you understand that when Mr. Hummel came --
22 when we were in the large room downstairs on the first
23 floor, that was Mr. Hummel's only obligation in this
24 case, is to show up that day?

25 **A. Yes.**

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86

1 **Q.** Okay. And he's been here every day since, but
2 his only obligation was to show up that day under the
3 law. So they don't have a burden. All right? Your
4 oath as a juror says you can't hold them responsible
5 for anything.

6 Does that make some sense?

7 **A. Yes, it does.**

8 **Q.** As human nature, you may want to know what's
9 going on. You may want to hear stuff. That's
10 everybody. Any time you walk into a courtroom, "I
11 wonder what they did" is the phrase that most jurors
12 say.

13 But when you take that oath and you
14 follow that oath as a juror, you have to put all that
15 aside. Does that make some sense?

16 **A. Yes, it does.**

17 **Q.** You can't ask the defense for anything. And
18 if they don't bring you anything, you can't hold that
19 against them. That's part of your oath. You have to
20 be able to set all that aside and base your decisions
21 solely on the evidence that you hear in the courtroom.
22 Okay?

23 **A. Okay.**

24 **Q.** So if they don't have a burden to this
25 question and I don't have a burden as the State of
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87

1 Texas, where would mitigating evidence come from? And
2 it may come from any of the testimony you hear in the
3 case.

4 It may be from the first or second
5 witness you hear in the trial or it may be one of the
6 last witnesses you hear or it may be a piece of
7 evidence that comes in. It may be a statement, a
8 video, a photo. It may be a story about a person's
9 life. Don't know. Okay?

10 **A. (Nods head.)**

11 **Q.** Because right now you don't know anything
12 about the case and I can't tell you anything about the
13 case. And it's not fair to put you on the spot until
14 you get to hear all the evidence, right?

15 **A. Right.**

16 **Q.** And when you first hear something, it may not
17 be mitigating, but when you look at it as a whole, it
18 might be mitigating. And that -- your oath as a juror
19 to keep that open mind and wait until all the facts to
20 come in to make your decision, then you get to -- get
21 a second Court's charge for these two special issues,
22 and the judge will give you the law and instruct you
23 on how to answer the questions and how to work through
24 them.

25 Does that make sense?

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88

1 **A. Yes, it does.**

2 **Q.** So can you keep an open mind and be on the
3 lookout for mitigating evidence if you were a juror?

4 **A. Yes.**

5 **Q.** And if you find mitigating evidence, could you
6 keep the open mind and see if it rises to a level
7 that's sufficient in your mind to vote yes to this
8 question?

9 **A. Yes.**

10 **Q.** And if it doesn't rise to a level that's
11 sufficient in your mind, would you be able to vote no?

12 **A. Yes.**

13 **Q.** And you'd be able to vote no knowing that a no
14 answer to this would likely result in the death
15 penalty?

16 **A. Yes.**

17 **Q.** Any questions on that oath you got to follow?

18 **A. No.**

19 **Q.** It's a rather simple thing when they swear a
20 jury in, but it's very important in a case that you
21 look at everything in the context of your oath. Your
22 oath drives what you have to do as a jury.

23 Does that make some sense?

24 **A. Yes.**

25 **Q.** Is there anything I haven't gone over with you

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89

1 this morning about all this that we need to know
2 about?

3 **A. No. Nothing.**

4 **Q.** So your oath as a juror, what's it mean to
5 you?

6 **A. It's like the law. You have to follow it.**

7 **Q.** And when -- when in doubt, you rely on your
8 oath and you let your oath and the Court's charge tell
9 you how to work through the problems.

10 Does that make some sense?

11 **A. Yes.**

12 **Q.** Any questions for us?

13 **A. No.**

14 MR. BRISSETTE: Thank you, Your Honor.
15 Pass the juror.

16 THE COURT: Okay. Defense?

17 MR. MOORE: Thank you, Your Honor.

18 **VOIR DIRE EXAMINATION BY THE DEFENSE**

19 BY MR. MOORE:

20 **Q.** Ms. Ruiz, I'm Larry Moore. Fred Cummings and
21 Pamela Fernandez and I represent John in this case.
22 And I want to take a little while to visit with you
23 about your prospective service as a juror. Okay?

24 **A. Okay.**

25 **Q.** And we'll talk a little bit about the same
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90

1 things that you talked with Mr. Brissette about, but I
2 don't see them the way he sees them. Okay?

3 **A. Okay.**

4 **Q.** And that really doesn't make any difference
5 because none of us are going to be jurors in this
6 case, but you might, and I want to make sure that I
7 understand how you feel.

8 This is a two-step process. Okay? First
9 step is we tell you everything, all of the law, that
10 might possibly come into play in this trial. And the
11 reason we do that is so that you can look at it and
12 see what you think about it. Okay?

13 Because Mr. Brissette has talked to you
14 about taking that oath as a juror. And once you take
15 that oath, you're bound to follow that. What we don't
16 want to do is have somebody put in the position of
17 taking that oath and for the first time finding out
18 there is some law that they're going to have to apply
19 that they don't agree with, because you're not
20 required to do that -- you're not required to take an
21 oath to be a juror in a case where there's some law
22 that you just can't live with.

23 You understand?

24 **A. Yes, I do.**

25 **Q.** So what we ask you is -- we tell you what the
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91

1 law is and we ask you to kind of do an introspective
2 look and see, How do I feel about that. And if I
3 don't like it and I disagree with it, if I disagree
4 with it such that I don't think that I can work within
5 that law.

6 And if it is, you don't have to take the
7 oath. You're not -- This isn't a test to see who gets
8 on jury duty. Okay? If you can follow the law,
9 great. If you can't follow the law, then you may not
10 be qualified as a juror in this particular kind of
11 case.

12 See how that works?

13 **A. Yes.**

14 **Q.** So the only important thing about it is you
15 look at it, you make a decision for yourself and you
16 tell us honestly how you feel about all this.

17 Then the second part of this process is
18 we -- both sides have to decide about how comfortable
19 we are with your answers because we get to excuse a
20 certain number of people from service in the case.
21 Okay?

22 **A. Okay.**

23 **Q.** So if I ask you something you don't understand
24 or if I word it badly, just ask me to explain it, or
25 if you have a question, just feel free to ask it

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92

1 because this is the only time we get to do this.
2 Okay?

3 **A. Okay.**

4 **Q.** All right. I want to talk to you a little bit
5 about your questionnaire. You -- How old were you
6 when you came here from Mexico?

7 **A. 18.**

8 **Q.** Did you come by yourself? Did you come with
9 your parents? How is it that you got --

10 **A. I came with my aunt. She brought me here the
11 first time. After six months here I went back to
12 Mexico and then I came back by myself.**

13 **Q.** When you went back, what did you go back for
14 the first time?

15 **A. It was Christmas, so I wanted to spend it with
16 my family and I ended up staying six months in Mexico.**

17 **Q.** Okay. Do you still have family that lives in
18 Mexico?

19 **A. Yes.**

20 **Q.** When did you work at the Joint Reserve Base at
21 the BX?

22 **A. I think it was -- I started in '99. I worked
23 for almost five years.**

24 **Q.** You said that if you changed your occupation
25 you'd change it to student. What would you like to
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93

1 study?
 2 **A. Social services.**
 3 **Q.** Like what? In what way?
 4 **A. Well, like, I would love to work in the**
 5 **offices where they apply for food stamps and help like**
 6 **that.**
 7 **Q.** Okay. How long have you and your husband been
 8 married?
 9 **A. Almost 20 years.**
 10 **Q.** Are the -- the two -- you got two girls that
 11 are 20. Are they twins or --
 12 **A. Yes, they are.**
 13 **Q.** And all five of your kids are in school right
 14 now?
 15 **A. Yes.**
 16 **Q.** Congratulations.
 17 **A. Thanks.**
 18 **Q.** That's exceptional. Were you raised in a --
 19 in a church in Mexico? Did you go to church in
 20 Mexico?
 21 **A. No.**
 22 **Q.** Was your family just not religious or --
 23 **A. No. They were not religious.**
 24 **Q.** Your husband was raised Catholic?
 25 **A. Yes.**

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94

1 **Q.** Do y'all ever attend any services at all at
 2 this point?
 3 **A. No.**
 4 **Q.** You've got a daughter that is going to some
 5 type of counseling?
 6 **A. Yes.**
 7 **Q.** Which daughter is it?
 8 **A. Victoria. She's 18. She's the baby.**
 9 **Q.** Okay. The youngest girl?
 10 **A. Yes.**
 11 **Q.** What is the nature of the counseling she's
 12 going to?
 13 **A. Well, it started when she was 13. She started**
 14 **to pull her hair out. I don't know the name of that,**
 15 **but she's in counseling. She goes every week.**
 16 **Q.** Okay. Is it a social worker that she goes to
 17 see or is it a psychologist?
 18 **A. Psychologist.**
 19 **Q.** Do you know the name of the psychologist?
 20 **A. Just by her first name. Vanessa.**
 21 **Q.** How long has she -- has your daughter gone to
 22 see the psychologist?
 23 **A. She just started going. Maybe five weeks.**
 24 **Q.** That's not very long. Have you noticed, does
 25 she appear to be helping her at all?

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95

1 **A. A little bit.**
 2 **Q.** You're -- You say this incident with your
 3 husband where he got charged with domestic violence
 4 was about ten years ago?
 5 **A. Yes.**
 6 **Q.** Did it happen on one occasion or more than one
 7 occasion?
 8 **A. One.**
 9 **Q.** How did the -- How did the police get called
 10 or how did they get involved?
 11 **A. Oh, I called them.**
 12 **Q.** Did it happen at home or --
 13 **A. Home.**
 14 **Q.** The -- Don Carter represented your husband in
 15 that case; is that correct?
 16 **A. That's correct.**
 17 **Q.** Did you talk to Mr. Carter in connection with
 18 his representation of your husband?
 19 **A. Yes. I met him once in his office.**
 20 **Q.** Did you call -- Do you recall if you ever went
 21 down and talked with the district attorney's office
 22 about the case?
 23 **A. No. I don't recall. I don't think so.**
 24 **Q.** Okay. Did Mr. Carter ask you to give him
 25 something in writing as some kind of a request that

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96

1 the case be disposed a certain way or something like
 2 that?
 3 **A. Yes, I think I did.**
 4 **Q.** The -- You said your husband ended up going to
 5 some classes and stuff like that. Did that help
 6 y'all's relationship?
 7 **A. Yes, it did.**
 8 **Q.** Was the -- the disposition of that case what
 9 you wanted to happen in that case, is that what
 10 happened?
 11 **A. Yes.**
 12 **Q.** Okay. Now, you got a brother-in-law that you
 13 say is in jail for DWI right now?
 14 **A. Yes. He is in jail.**
 15 **Q.** How long has he been in jail?
 16 **A. A little over a year.**
 17 **Q.** Where is he at, do you know?
 18 **A. I don't know.**
 19 **Q.** Did you have much contact with him before he
 20 got locked up?
 21 **A. No, not really.**
 22 **Q.** You said that you really don't want to serve
 23 in this case because you wouldn't like to have
 24 somebody's fate in your hands.

Have you ever been in the position where
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97

1 you've had to make life and death decisions?

2 **A. No, I don't think so.**

3 **Q.** Ever had a sick relative or anything where you
4 had to go to the hospital and make a decision as to
5 whether or not they're going to continue treatment or
6 anything like that?

7 **A. No.**

8 **Q.** All right. I want to talk to you a little bit
9 about the law that might apply to the trial of the
10 case and I want to talk to you about the views on the
11 death penalty in connection with that.

12 That little slide that's up on the -- on
13 the thing right there, all that tells you is you've
14 got your -- absolute right to your own opinion. Just
15 tell us what -- tell us how you feel and what you
16 think and that nobody is going to argue with you about
17 it.

18 Murder in Texas has got a pretty simple
19 definition. If I knowingly cause somebody's death and
20 there's no legal excuse for it, then that's a murder.
21 Okay? And "knowingly" is a legally defined term. It
22 means that I'm reasonably certain that my conduct is
23 going to cause his death.

24 There are -- We punish homicides. That's
25 a -- Homicides are a crime where somebody loses their
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98

1 life based on what's in the mind of the defendant, the
2 person that commits the crime.

3 And for it to be murder, it's got to be
4 intentionally or knowingly. Intentionally is it's my
5 conscience objective or desire to cause the death, or
6 knowingly, I'm reasonably certain that my conduct is
7 going to cause his death.

8 So it's got to be one of those two mental
9 states in order for it to be murder. Okay?

10 **A. Okay.**

11 **Q.** If I do it negligently or if I do it
12 recklessly, that may still be a crime, but that's a
13 lesser mental state and it's not murder. Okay?

14 **A. Okay.**

15 **Q.** See how that works? And that presumes that
16 there's not -- there's sometimes when I can cause
17 somebody's death knowingly or intentionally and it not
18 be a murder.

19 If I'm acting in self-defense or defense
20 of my family or something like that, then the law
21 recognizes that as a justification. It's not a crime.
22 See what I mean?

23 **A. Yes.**

24 **Q.** Okay. So we're talking about a situation
25 where that doesn't apply. I go out and I decide I'm
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99

1 going to take somebody's life and there's no
2 justification for it, then it's a murder.

3 That offense is the one that has a wide
4 range of punishment from five years to 99 years or
5 life. And the -- And the thought is, there's a
6 thousand different fact situations that might fit that
7 definition, you know, how it happened, why it
8 happened, things like that could be different.

9 And so the jury when they find somebody
10 guilty of murder, they go out and they decide on a
11 number between five years or 99 years or life as to
12 what they feel like is appropriate for that particular
13 offense. Okay?

14 And the presumption is, there are some
15 murders where five years is going to be the proper
16 sentence and there's some murders where life would be
17 the proper sentence. You see what I mean?

18 **A. Yes.**

19 **Q.** Okay. Now, the law says that in order to be
20 qualified as a juror, a juror has to be able to fairly
21 consider that full range of punishment. If they don't
22 agree with it, they don't like it, then they may not
23 be qualified to serve, but that's up to the individual
24 juror. It depends on how they view it and what they
25 think.

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100

1 And one of the questions in the
2 questionnaires asked about: Are you generally in
3 favor of the death penalty. And the answer that you
4 gave was: Anybody that takes a life does not deserve
5 to live.

6 What were you thinking when you wrote
7 that? What was your thought?

8 **A. Well, I was thinking about the pain of the
9 family. I was thinking about my kids. What if
10 something like that would happen to any of my kids.**

11 **Q.** Uh-huh. Do you think that -- you know, do you
12 think that -- that acting as a juror in a case, if you
13 were to find somebody guilty of murder, if you find --
14 if you found that they knowingly caused somebody's
15 death without any legal excuse, do you think that you
16 could fairly consider that full range of punishment
17 from five years to 99 years or life?

18 **A. Yes.**

19 **Q.** Okay. So you're not of a mind -- Even though
20 that's what you were thinking at the time you wrote
21 that, you're not of the mind that you could never
22 consider five years as a punishment; is that correct?

23 **A. That's correct.**

24 **Q.** Okay. You indicated that you thought that the
25 death penalty in some way might help the families of
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101

1 the victims. What did you mean by that?

2 **A. Well, like -- sorry -- like a lot of people,**
3 **they need closure, but, like you say, now that you're**
4 **saying it depends on the murder, if it's going to be**
5 **death penalty or not.**

6 **Q.** Yeah. And I -- I think I understand what you
7 were saying, but, you know, the process, the legal
8 process is not going to bring that child back. It may
9 give them some closure by bringing that person to
10 justice. Okay?

11 Doesn't necessarily mean that the
12 penalties that the jury feels is appropriate is
13 necessarily going to be what the family feels is
14 appropriate.

15 **A. Yes.**

16 **Q.** You understand?

17 **A. Yes.**

18 **Q.** Because we don't let the families dictate the
19 punishment. The jury, the community, comes in and
20 makes that decision because the crime -- the crime not
21 only can affect families, but it's a crime against the
22 community. That's why jurors come in and they make an
23 independent decision as to what they think is
24 appropriate over everything they hear.

25 Do you agree with that process?

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102

1 **A. Yes, I do.**

2 **Q.** And some -- And there's some people that are
3 never going to get closure. The process -- you know,
4 the legal process does what it's going to do and it
5 may or may not satisfy them and they may never be
6 satisfied because that loss will always be there.

7 You see what I mean?

8 **A. Yes.**

9 **Q.** Okay. It's only if the defendant is found
10 guilty of a certain kind of murder -- Am I going the
11 wrong way -- and that's capital murder where the death
12 penalty or life without parole are a possibility.

13 Life for murder is different than life
14 for capital murder. Life for murder is an offense
15 that carries with it the possibility of parole. The
16 law -- You get an instruction that will tell you that
17 a person that's convicted of murder can be eligible
18 for parole after they've served one-half of their
19 sentence or 30 calendar years, whichever is less,
20 because everything from 60 years on up is treated the
21 same for parole eligibility purposes.

22 Once you've served 30 years, whether you
23 have 60 years, 70 years or life, you're eligible for
24 parole for murder. It doesn't mean the Board of
25 Pardon and Paroles are going to control you, okay,

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103

1 because that decision is out of everybody's hands
2 except theirs.

3 The governor of the state and the Board
4 of Pardon and Paroles will make that decision, but you
5 have to serve half of that sentence before you're ever
6 even eligible to make that decision.

7 See how that works?

8 **A. Yes.**

9 **Q.** Okay. With capital murder and life without
10 parole, you're never eligible. You see? You either
11 die in prison -- and if there's -- you still have
12 family left, you know, they can come claim your body,
13 or, if not, you're buried in the prison cemetery.

14 Life without parole means you never
15 leave. Okay?

16 **A. Okay.**

17 **Q.** And that's the distinction, because we don't
18 have life without parole for any other offense other
19 than capital murder. Just like we don't have the
20 death penalty for any other offenses other than
21 capital murder. Those two distinct punishments are
22 reserved for this one crime. Okay?

23 **A. Okay.**

24 **Q.** Now, there's different ways that you can
25 commit capital murder. You've heard about, you know,
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104

1 killing a police officer in the line of duty. That's
2 capital murder.

3 Well, the way they've alleged it in this
4 indictment is this multiple murder scheme. Okay? And
5 what the statute says, it's more than one murder
6 committed during the course of a single criminal
7 transaction or the same criminal transaction.

8 And I want to talk to you a little bit
9 about some of this to make sure I understand how you
10 feel about it. Mr. Brissette told you they've got to
11 allege everything in the indictment that they intend
12 to prove.

13 And the reason for it is because we're
14 entitled to know what it is that we're supposed to
15 defend against. Okay? It wouldn't be fair, I don't
16 think, to, you know, say, Okay. We're going to prove
17 that you killed somebody by running over them with a
18 car. And when we get to trial, oh, big surprise, you
19 didn't run over them with a car. You pushed them off
20 the cliff. See what I mean?

21 So that's -- that's the reason that the
22 law says they've got to allege everything and include
23 it the way that it is. Do you have any questions
24 about how that works?

25 **A. No.**

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105

1 Q. Are you comfortable with the prospect that a
2 jury could find themselves in the position of hearing
3 evidence that was at variance with what they allege in
4 their indictment? They could say it happened one way
5 and prove it happened a different way.

6 See what I mean?

7 A. Yes.

8 Q. Now, that guy -- the victim is still dead.
9 And the jury is, at that point, in the position where
10 they're fixing to have to set the killer free and find
11 him not guilty based on that mistake. Some jurors can
12 do that; some can't.

13 Would you be able to do that?

14 A. Yes.

15 Q. You think it's important to make them give us
16 notice as to what it is we're supposed to defend
17 against?

18 A. Yes, it is.

19 Q. Okay. And that's the whole purpose of it.
20 And these are kind of extreme examples, but the reason
21 is, so that you'll understand what the law would
22 require you if you're called to serve. Okay?

23 A. Okay.

24 Q. One of the things that's kind of interesting
25 about this is, we don't define for you that term "same
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106

1 criminal transaction." You can have a murder and a
2 murder and it not be a capital murder, because if
3 they're not in the same criminal transaction, then
4 it's two separate murders and you punish him
5 separately for each one of them.

6 See what I mean?

7 A. Yes.

8 Q. So the jury would have to find, in order to
9 find capital murder, that a person knowingly killed
10 one individual and he knowingly killed another
11 individual and that for -- by whatever definition you
12 give it, it was all during one transaction. Okay?

13 A. Okay.

14 Q. And Mr. Brissette gave you some examples, I
15 guess, of things that an individual juror might
16 consider as the same transaction. That's a decision
17 you make independently. Okay?

18 A. (Nods head.)

19 Q. You define that for yourself what it means,
20 whether it means putting a hand grenade in a car with
21 four people and killing all four people at one time or
22 the Oklahoma City bombing where you kill over 100 or
23 whatever it is that you think a single criminal
24 transaction constitutes.

25 See how that works?

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107

1 A. Yes.

2 Q. Let me ask you a question, give you a
3 hypothetical situation. If you go down -- If you
4 decide you're going to go Christmas shopping and
5 you're going to buy Christmas presents for your oldest
6 daughter, when you go to the Sears store and you go on
7 one floor and you buy makeup and you pay for it and
8 you go to the next floor and you buy a nightgown and
9 you pay for it, that is a single transaction or is
10 that two transactions?

11 A. That's two transactions.

12 Q. Okay. And that's the kind of decision-making
13 that you may have to engage in to decide, Is this all
14 one transaction or is this more than one transaction.
15 Because if it's more than one transaction, it's not
16 capital murder. Okay?

17 A. Okay.

18 Q. Any questions about that, how that works?

19 A. No.

20 Q. All right. We talked a minute ago about if
21 you go out to decide punishment in a murder case, you
22 know, you go out and you go and y'all decide the
23 number of years.

24 And with capital murder -- you find
25 somebody of capital murder guilty, the punishment is
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108

1 different because we use this special issue
2 submission. And the way this is intended to work is
3 this is -- these questions are intended to decide of
4 all those people convicted of capital murder who is
5 going to get life in the penitentiary and who is going
6 to get the death penalty. Okay?

7 And there's a presumption that they're
8 going to get life unless the State can prove something
9 additional. See what I mean?

10 A. (Nods head.)

11 Q. You need to speak up because she can't catch a
12 nod.

13 A. Yes.

14 Q. I can see it fine, but she's having trouble.
15 Because it doesn't -- These questions are intended to
16 be the mechanism by which we decide of everybody
17 guilty of capital murder, who's going to get the death
18 penalty, who's going to get life.

19 If we wanted everybody that was found
20 guilty of capital murder to get the death penalty, we
21 could try to write the statute that way, but that's
22 not what they said.

23 They said it's going to be a life
24 sentence unless the State proves the first question
25 and the jury finds in a particular way in regards to
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109

1 the second question. See what I mean?

2 **A. Yes.**

3 **Q.** Okay. For this process to be meaningful, we
4 would assume that we're asking the jury to find
5 something different than they would have already found
6 in regard to a particular defendant when they found
7 him guilty.

8 Because if finding him guilty meant, you
9 know, that he got the death penalty, then these
10 questions don't mean anything. Do you agree with me
11 on that?

12 **A. Yes, I do.**

13 **Q.** Okay. The first question asks you, and they
14 refer to it as the future dangerousness question, and
15 it asks the jury to find as he sits there in court, is
16 there that probability that he is going to do certain
17 things; that he would commit certain types of acts in
18 the future; that he's going to commit criminal acts of
19 violence.

20 And not only are they going to be
21 criminal acts of violence, but they're going to be of
22 such a magnitude and degree that you would consider
23 him to be a threat. Okay? You see what I mean?

24 **A. Yes.**

25 **Q.** All right. The problem with this is, is they
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110

1 don't define any of those questions -- any of those
2 words, and so we leave it to the jurors'
3 understandings.

4 It's kind of like when we talked earlier
5 about that single criminal transaction or same
6 transaction, we leave it to your understanding. And
7 the way that you define probability may be different
8 from the way the guy next to you defines it.

9 See how that works?

10 **A. Yes.**

11 **Q.** All right. Now, they told you that it's
12 not -- you know, they didn't use the term "is there a
13 chance" or "is it possible" or "could it possibly
14 occur." They said is it "probable" or they want you
15 to find is it probable.

16 Do you see a distinction between the
17 question that's being asked if they ask, Is it
18 possible that it could occur as opposed to is it
19 probable that it could occur?

20 **A. Yes.**

21 **Q.** Why do you think you look -- If you're trying
22 to decide whether something's probably going to
23 happen, how would you make that decision? What would
24 you look at in order to determine whether something
25 would probably occur in the future?

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111

1 **A. I guess one of the things would be like if**
2 **during the trial, it comes out that the person has a**
3 **bad temper, stuff like that.**

4 **Q.** Uh-huh. And you can hear additional evidence
5 in the punishment phase that you didn't hear at the
6 first part. Any fact that the judge finds to be
7 relevant to the sentencing phase is admissible to
8 either side; any good thing or bad thing about this
9 person from their whole life is admissible for the
10 jury to help them, if it does.

11 If whenever he was six years old the
12 defendant pushed the little lady that lived next door
13 down a flight of stairs, the jury gets to hear about
14 that, if the State chooses to introduce it.

15 If when the little boy was six years old
16 he used to help his neighbor across the street, you
17 know, the Defense can put that on if they wish to try
18 to give the jury information that will give them some
19 insight as to the particular individual.

20 See how that works?

21 **A. Yes.**

22 **Q.** And some people, in order to find that
23 there's -- he's probably going to commit criminal acts
24 of violence in the -- in the future, want to look at,
25 has he committed criminal acts of violence in the
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112

1 past. Okay.

2 Was this -- Obviously, you would have
3 found him guilty of these two murders or you would
4 never be asked this question, but you may want to look
5 beyond that; is that the first and only time that he's
6 ever been violent or does he have a history of
7 violence.

8 See what I mean?

9 **A. Yes.**

10 **Q.** And even then, if somebody has been violent in
11 the past, you know, that doesn't always mean that
12 they're going to continue to be violent in the future.
13 I mean, the jury decides that.

14 It may be that that was a one-time
15 occurrence, kind of the situation with your husband.
16 He did it one time. He got punished for it and that's
17 the end of it. And the jury takes all that into
18 consideration in deciding whether he's probably going
19 to do this in the future.

20 See how it works?

21 **A. Yes.**

22 **Q.** You have any questions about that?

23 **A. No.**

24 **Q.** All right. And it's only if the jury is
25 convinced beyond a reasonable doubt that the question
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113

1 should be answered yes, that they can answer the
2 question. Okay.

3 Mr. Brissette told you that if the jury
4 chooses to, the facts of the murder alone may be
5 sufficient for the jury to answer the question yes.
6 If they look at the facts of the case and for them
7 those facts alone are sufficient to convince them
8 beyond a reasonable doubt that they know enough about
9 this person's character and background and the type of
10 person he is to know that he's going to be a threat,
11 that's sufficient. Okay.

12 Other jurors -- but it's up to the
13 jurors, because another juror may not think that the
14 facts alone are sufficient. Okay. The law doesn't
15 say that you have to find it based on that. It says
16 that you can if you want to.

17 **A. Okay.**

18 **Q.** See how that works?

19 And they have to -- And they have to do
20 it by that same standard of proof beyond a reasonable
21 doubt that they have to prove that he's guilty. We
22 don't define beyond a reasonable doubt for you. Okay?

23 **A. Okay.**

24 **Q.** It's the highest standard of proof in the law,
25 and I want to talk to you a little bit. I don't

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114

1 remember if in the panel that you were on they
2 actually talked to you about the burdens of proof, but
3 there's a difference.

4 If I go to sue you in civil court -- If
5 you back into my car in the parking lot when we're
6 leaving today and I want to sue you for the damage, I
7 have to prove that you damaged my car by a
8 preponderance of the evidence. That has a legal
9 definition. It's the greater weight and degree of the
10 credible evidence. The greater weight and degree of
11 the credible evidence, that's the standard by which I
12 must prove that you're at fault. Okay?

13 **A. Okay.**

14 **Q.** If the State of Texas decided that you were an
15 unfit parent and was going to try to take that
16 13-year-old boy away from you and terminate your
17 rights so that you would no longer have any parental
18 authority over that child, he'd be removed from your
19 home and placed someplace else. They have to do it by
20 clear and convincing evidence.

21 And clear and convincing evidence is
22 legally defined. It's defined as being the type of
23 evidence that would be sufficient to establish a firm
24 conviction or belief of the truth of the matter being
25 asserted in the mind of the fact finder.

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115

1 So there would have to be evidence
2 sufficient to establish in the mind of the jury a firm
3 conviction or belief that you were an unfit parent.
4 Okay?

5 **A. Okay.**

6 **Q.** Proof beyond a reasonable doubt is more than
7 that. It's proof beyond any reasonable doubt. And I
8 guess there's a distinction between what constitutes a
9 reasonable doubt and what an unreasonable doubt might
10 be. All right.

11 It may be that a jury may -- that a
12 particular juror may say, Well, I don't doubt that he
13 did it on his own because the little green martians
14 may have come down and made him do it.

15 That's a doubt that's not based on reason
16 and common sense. It's about reasonable doubt, and
17 that's not what we're talking about. We're talking
18 about beyond any reasonable doubt.

19 See how that works?

20 **A. Yes.**

21 **Q.** If you have a doubt, you don't even have to be
22 able to enunciate what it is. I mean, you don't even
23 have to be able to say this is what it is. It's just
24 something that you feel that hasn't been proved.

25 See how that works?

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116

1 **A. Yes.**

2 **Q.** You have any questions about that first
3 question or how we get there?

4 **A. No.**

5 **Q.** All right. It's only if the jury answers that
6 question unanimously yes that we get to the second
7 question. If they answer it no, there's a life
8 sentence and everybody goes home. All right.

9 Do you have any thought about what
10 happens if the jury can't get ten people to answer the
11 question no or 12 people to answer the question yes?

12 **A. No.**

13 **Q.** Okay. Let me tell you. You might get an
14 instruction -- If the jury says, Judge, we're tied up
15 six to six. We can't answer the question. You might
16 get an instruction from the Court that says, Go back
17 and try to continue to deliberate, okay, and arrive at
18 a verdict, if you can.

19 But in that instruction, the Court will
20 tell you, you may not violate your individual
21 conscience just -- in order to reach a verdict. Okay?

22 **A. (Nods head.)**

23 **Q.** Because the jury verdict is a cumulative
24 verdict of all 12 jurors or all 10 jurors if they can
25 agree, but it's got to be the individual juror's

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117

1 verdict because he can't -- he has to vote his own
2 conscience. Regardless what everybody else is doing
3 back there, he has to vote his own heart and his mind.
4 Okay?

5 **A. Okay.**

6 **Q.** And the only way that there's ever a death
7 sentence is if all 12 jurors answer the first question
8 no -- I mean, the first question yes and the second
9 question no.

10 **A. Okay.**

11 **Q.** It has to be unanimous. If the jury -- You
12 see how one juror can ensure that a death sentence
13 will not result if in their own heart and mind they
14 don't think the death sentence is the only appropriate
15 punishment?

16 **A. Yes. I can see it.**

17 **Q.** All right. This is the second question, and
18 this is -- the only time you even get this question is
19 if you already found the guy guilty of capital murder
20 and you found that he's a future danger. That's the
21 only time you get it.

22 So we operate from the position that the
23 jury has already made those two findings, and then
24 they're asked to decide whether or not there's any
25 mitigating circumstance or circumstances that tells
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118

1 them that a life sentence is enough; that him spending
2 the rest of his life and dying in prison is enough to
3 pay for what he did. Okay?

4 **A. Okay.**

5 **Q.** Now, they don't have to prove that there is no
6 mitigating evidence or no mitigating evidence
7 circumstance. There's no burden of proof assigned in
8 that question.

9 I'm not required to prove or the Defense
10 is not required to prove that there is a mitigating
11 circumstance. Okay? That doesn't mean that we
12 wouldn't offer evidence for the jury, but mitigating
13 evidence is what you take it to be.

14 And so it may be that it's something that
15 I'm not looking at in the evidence because it may be
16 something that you see in the way that the crime was
17 committed or in this person's background or whatever
18 that tells you the life sentence is enough. Okay?

19 **A. Okay.**

20 **Q.** So it may be that I'm over here talking about
21 one thing and you're thinking about something else and
22 that's perfectly fine, because you can get ten people
23 to agree that the answer to that question should be
24 yes and it could be for ten different reasons.

25 One can say, Yes. I think it's a
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119

1 mitigating circumstance that this person helped his
2 little grandmother when he was growing up. And
3 another person can say, That doesn't mean that much to
4 me, but he served in the military and helped -- you
5 know, helped his country.

6 Another juror can say, Well, you know,
7 the single -- there's one single act of kindness that
8 stands out in my mind that he did, you know, when he
9 was a child that tells me that that person is worth
10 saving. See what I mean?

11 **A. Yes.**

12 **Q.** It's an individual decision and it's not
13 assumed that I'm going to have to prove it. See how
14 that works?

15 **A. Yes.**

16 **Q.** It doesn't mean we're going to sit here like
17 lumps during the trial. It just means that I don't
18 have a legal burden to bring that.

19 You have any question about that?

20 **A. No.**

21 **Q.** Now, it's sometimes a little bit problematic
22 because you look at that question and it asks you, Is
23 it a sufficient mitigating circumstance to tell you
24 that a life sentence is appropriate. It's kind of
25 asking you to weigh, but it doesn't give you much
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120

1 instruction on how you weigh the evidence.

2 You see what I mean?

3 **A. Yes.**

4 **Q.** And, basically, all I can tell you is you have
5 to decide in your own heart what you think the
6 appropriate sentence is based on everything you've
7 heard. Any questions about that?

8 **A. No.**

9 **Q.** Okay. It has -- Once again, the question has
10 to be answered unanimously no in order for there to be
11 a death sentence if ten jurors agree it can be
12 answered yes. All right?

13 **A. Okay.**

14 **Q.** You have been very patient with me,
15 Ms. Ruiz. Have you got any questions about any of
16 this we talked about up to this point?

17 **A. No.**

18 **Q.** You feel like you understand the process?

19 **A. Yes.**

20 **Q.** Do you feel like that you could go into the
21 jury box and just be fair and call it the way that you
22 see it?

23 **A. Yes.**

24 **Q.** There's a great temptation for jurors to feel
25 sympathy for the families of the victims and to feel
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121

1 anger on the acts of the accused. The jury has to
2 look at the evidence in the case and make their
3 decision based on the evidence that they see.

4 Can you do that?

5 **A. Yes.**

6 **Q.** Is there anything about this process -- You
7 know, we've talked to you three times now and we've
8 talked to you about the death penalty and everything
9 else.

10 Is there anything about this process that
11 makes you in any way feel like John Hummel is guilty
12 of anything?

13 **A. No.**

14 **Q.** Okay. That's what the trial's for. The law
15 says we have to talk about everything that might
16 possibly come up right now or we don't get to do it
17 later. Okay?

18 **A. Okay.**

19 **Q.** Ms. Ruiz, thank you very much.

20 MR. MOORE: I'll pass.

21 THE COURT: And if you'll have a seat out
22 in the front hallway, we'll call you back in in just a
23 few minutes.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: Thank you.

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122

1 State have a challenge for cause?

2 MR. BRISSETTE: No, ma'am.

3 THE COURT: Does the Defense?

4 MR. MOORE: No, Judge.

5 THE COURT: State exercise a peremptory?

6 MR. BRISSETTE: No.

7 THE COURT: Defense?

8 MR. MOORE: No.

9 THE COURT: All right. Ms. Ruiz, you are
10 going to be a juror in the case of The State of Texas
11 vs. John William Hummel. I need to administer an oath
12 to you as a juror and then you will also be sworn in
13 again once all 12 of you are assembled on the morning
14 of trial.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: So if you'll raise your right
17 hand, please.

18 (Juror sworn.)

19 THE COURT: Okay. Now, you will remember
20 that the trial is scheduled to begin on Monday,
21 June 13th, at 9 o'clock. You will need to report to
22 the 432nd District Court on the sixth floor, which is
23 where you had your mini panel interview.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: Okay?

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123

1 PROSPECTIVE JUROR: (Nods head.)

2 THE COURT: Like they've told you before,
3 the trial is scheduled to last approximately two
4 weeks, and at this point I don't see that date -- the
5 beginning of the trial changing.

6 If it does for some reason change, you
7 will be notified by the Court. Okay?

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: Otherwise, just be here that
10 morning at 9 o'clock. Wear your jury badge so that
11 people will know that you're a juror and they'll know
12 not to talk about the case around you. That also is
13 your parking pass.

14 And then I have given you these
15 instructions previously and you have a copy of them in
16 writing, but in order to, hopefully, avoid the jury
17 having to be sequestered in this case, it is very,
18 very important that the jury follow all of their
19 instructions.

20 So I'm going to remind you, once again,
21 not to -- not to ask anybody about the law applicable
22 to this case or research the law or this case on your
23 own. Do not discuss the case with anyone or the legal
24 instructions.

25 It is most important that you not discuss
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124

1 the case with anyone, conduct Internet research or
2 read or listen to any media report about the case.
3 You may not receive information about this case from
4 any other source other than what you are presented in
5 the courtroom concerning the case. That means to not
6 Google or search any party or lawyer or court
7 personnel in this case.

8 Do not conduct any research whatsoever on
9 the Internet about this case or the parties or facts
10 involved in it. You may not write or blog about the
11 case, events surrounding the case or your jury
12 service. You may not Tweet about the parties, events
13 or facts in this case or your jury service on this
14 case.

15 Do not send e-mails to anyone conveying
16 your jury experience or information about this case.
17 Do not use your cell phone to call anyone to ask
18 questions about issues in this case, to report facts
19 about this case or to research the case.

20 You may not use Facebook, MySpace,
21 LinkedIn, YouTube, Twitter or any other social network
22 on the Internet to discuss your jury service or issues
23 in this case or people involved in this case or to
24 research persons involved in this case.

25 Do you have any questions regarding those
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125

1 instructions or what's expected of you?
 2 PROSPECTIVE JUROR: No.
 3 THE COURT: Okay. Then we will see you
 4 on Monday, June 13th, at 9 o'clock in the 432nd.
 5 Okay. Thank you.
 6 (Juror dismissed.)
 7 THE COURT: Do y'all want to address 136
 8 before we break for lunch? Okay. Chronologically,
 9 No. 135 was dismissed by agreement; 136, we are -- we
 10 have reached in chronological order. She was
 11 interviewed yesterday and we did challenges for cause
 12 yesterday.
 13 Does the State exercise a peremptory on
 14 136?
 15 MR. GILL: No, Your Honor.
 16 THE COURT: Does the Defense?
 17 MR. CUMMINGS: Yes, Your Honor.
 18 (Break taken.)
 19
 20
 21
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 25

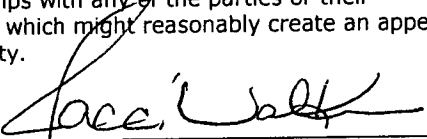
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126

DISCLOSURE


1
 2
 3 NOTE: Texas Supreme Court rule adopted and
 4 promulgated in conformity with Chapter 52 of
 5 the Government Code, V.T.C.A.
 6
 7

8 Please be advised that pursuant to the
 9 Texas Government Code with regard to disclosure, I, to
 10 the best of my knowledge, have no existing or past
 11 financial, business, professional, family or social
 12 relationships with any of the parties or their
 13 attorneys which might reasonably create an appearance
 14 of partiality.
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127

1 THE STATE OF TEXAS)
 COUNTY OF TARRANT)
 2 I, Jacci Walker, Deputy Official Court Reporter in
 3 and for the 432nd District Court of Tarrant County,
 4 State of Texas, do hereby certify that the above and
 5 foregoing contains a true and correct transcription of
 6 all portions of evidence and other proceedings
 7 requested in writing by counsel for the parties to be
 8 included in this volume of the Reporter's Record, in
 9 the above-styled and numbered cause, all of which
 10 occurred in open court or in chambers and were
 11 reported by me.
 12 I, Jacci Walker, further certify that this
 13 Reporter's Record of the proceedings truly and
 14 correctly reflects the exhibits, if any, admitted by
 15 the respective parties.
 16 I further certify that the total cost for the
 17 preparation of this Reporter's Record is _____ and
 18 was paid/will be paid by TARRANT COUNTY.
 19 WITNESS MY OFFICIAL HAND this the 12th day of
 20 January, 2012. 
 21

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	1989 [1] - 58:7	7	acts [22] - 17:16, 19:3, 20:11, 20:13, 20:22, 20:23, 20:25, 22:3, 24:19, 41:14, 78:20, 79:13, 79:16, 79:17, 109:17, 109:18, 109:21, 111:23, 111:25, 121:1	92:23, 93:9
'90 [1] - 58:8	2	7 [1] - 4:3	addition [1] - 46:8	alone [3] - 113:4, 113:7, 113:14
'90's [1] - 68:4	2 [8] - 14:9, 25:24, 26:12, 32:3, 32:7, 43:21, 83:10	70 [1] - 102:23	additional [5] - 12:3, 73:25, 74:8, 108:9, 111:4	ALPHABETICAL [1] - 4:1
'98 [1] - 58:6	20 [4] - 34:16, 49:18, 93:9, 93:11	76117 [2] - 126:20, 127:24	address [1] - 125:7	amount [1] - 34:5
'99 [2] - 58:6, 92:22	2005 [1] - 58:20	8	administer [1] - 122:11	Angeles [6] - 9:8, 9:14, 9:23, 10:3, 34:16, 47:3
0	2008 [1] - 58:20	817 [2] - 126:21, 127:24	admissible [2] - 111:7, 111:9	anger [1] - 121:1
0 [1] - 82:14	2011 [1] - 5:3	89 [1] - 4:9	admitted [1] - 127:14	answer [36] - 18:1, 23:21, 23:23, 24:4, 30:6, 32:2, 32:7, 32:8, 32:12, 32:20, 40:5, 43:10, 64:3, 64:14, 64:25, 75:7, 75:8, 75:16, 80:21, 81:11, 81:19, 81:21, 82:2, 85:16, 87:23, 88:14, 100:3, 113:1, 113:5, 116:7, 116:10, 116:11, 116:15, 117:7, 118:23
1	2012 [1] - 127:20	9	adopted [1] - 126:3	answered [7] - 14:13, 14:15, 18:3, 18:8, 113:1, 120:10, 120:12
1 [16] - 5:3, 14:5, 16:21, 25:21, 26:11, 41:1, 42:24, 43:25, 44:10, 74:17, 77:12, 81:4, 82:16, 82:17, 83:6, 83:9	24 [1] - 83:25	9 [3] - 122:21, 123:10, 125:4	adult [1] - 29:18	answering [4] - 42:22, 65:5, 75:21, 76:12
10 [1] - 116:24	26 [1] - 66:1	99 [5] - 38:17, 72:7, 99:4, 99:11, 100:17	advised [1] - 126:8	answers [8] - 13:22, 14:10, 17:24, 64:15, 74:19, 83:9, 91:19, 116:5
100 [1] - 106:22	27 [1] - 48:19	9:01 [1] - 5:3	affect [9] - 6:9, 9:19, 10:22, 11:4, 56:13, 56:17, 80:17, 101:21	appear [4] - 52:2, 52:11, 53:19, 94:25
105 [2] - 126:20, 127:23	29 [11] - 4:3, 4:4, 4:4, 4:6, 4:7, 4:9, 4:9, 4:10, 4:10, 4:11, 5:2	A	afterwards [3] - 10:23, 11:4, 11:6	appearance [1] - 126:13
10:00 [1] - 7:15	2:00 [1] - 7:14	a.m [2] - 7:14, 7:15	age [3] - 28:7, 28:8, 45:22	appeared [2] - 8:4, 52:10
12 [13] - 35:16, 39:3, 39:14, 43:23, 43:24, 49:14, 49:16, 82:14, 84:1, 116:11, 116:24, 117:7, 122:13	3	A.M [1] - 5:3	aggravating [1] - 28:2	applicable [1] - 123:21
12/31/13 [2] - 126:18, 127:22	30 [2] - 102:19, 102:22	ability [4] - 6:10, 36:2, 56:13, 56:17	ago [15] - 6:8, 34:16, 49:18, 56:12, 57:16, 59:21, 60:24, 60:25, 61:2, 61:11, 63:15, 65:24, 67:15, 95:4, 107:20	applies [6] - 37:4, 37:18, 38:12, 38:15, 45:14, 57:12
122 [3] - 4:10, 4:10, 4:11	30's [2] - 28:18, 28:23	able [20] - 11:7, 24:4, 32:7, 32:12, 33:1, 41:22, 44:6, 48:3, 55:20, 80:21, 81:21, 82:2, 82:4, 86:20, 88:11, 88:13, 99:20, 105:13, 115:22, 115:23	agree [12] - 11:21, 70:16, 78:10, 78:14, 79:17, 90:19, 99:22, 101:25, 109:10, 116:25, 118:23, 120:11	apply [10] - 48:24, 59:6, 66:8, 67:19, 73:7, 84:12, 90:18, 93:5, 97:9, 98:25
125 [1] - 4:7	33 [1] - 4:4	above-styled [1] - 127:9	agreed [1] - 51:15	applying [1] - 66:21
12th [1] - 127:19	335-5568 [2] - 126:21, 127:24	absolute [4] - 49:12, 77:20, 78:9, 97:14	agreement [2] - 51:21, 125:9	approach [1] - 66:22
13 [1] - 94:13	34 [1] - 74:22	accept [2] - 38:22, 46:25	Agreement [1] - 4:6	appropriate [10] - 12:15, 44:20, 73:9, 99:12, 101:12, 101:14, 101:24, 117:14, 119:24, 120:6
13-year-old [1] - 114:16	36 [2] - 40:10, 82:10	Accepted [1] - 4:10	ahead [2] - 5:13, 13:23	area [1] - 9:5
132 [2] - 5:5, 5:14	4	accident [1] - 43:4	Airport [2] - 126:20, 127:23	argue [1] - 97:16
133 [3] - 51:15, 51:25, 68:1	40's [2] - 28:18, 28:23	according [2] - 8:12, 46:22	alive [1] - 15:2	Army [3] - 58:7, 58:10,
134 [3] - 55:6, 55:7, 55:13	432nd [5] - 122:22, 125:4, 126:19, 127:3, 127:23	accusation [1] - 43:14	allegations [1] - 41:16	
134th [1] - 55:22	5	accused [2] - 37:24, 121:1	allege [4] - 38:4, 104:11, 104:22, 105:3	
135 [1] - 125:9	50 [2] - 4:4, 53:15	act [13] - 20:18, 21:12, 21:15, 21:18, 25:9, 25:17, 27:20, 28:19, 78:24, 79:4, 79:21, 119:7	alleged [2] - 38:5, 104:3	
136 [3] - 125:7, 125:9, 125:14	50-person [1] - 64:6	acting [2] - 98:19, 100:12	allow [1] - 25:12	
137th [1] - 55:22	51 [1] - 4:6	active [1] - 58:7	allowed [1] - 74:3	
138 [1] - 51:15	52 [1] - 126:4		allows [1] - 73:14	
13th [2] - 122:21, 125:4	5208 [2] - 126:20, 127:23		almost [3] - 19:24,	
18 [7] - 28:7, 28:8, 28:17, 29:13, 31:12, 92:7, 94:8	55 [1] - 5:2			
18-year-old [2] - 28:15, 28:16	57 [1] - 4:9			
18th [1] - 31:11	6			
1984 [2] - 47:8, 47:18	60 [2] - 102:20, 102:23			
	6843 [2] - 126:18, 127:21			

58:12 arrive [1] - 116:17 artillery [1] - 58:25 aside [3] - 65:22, 86:15, 86:20 assault [1] - 78:25 assaults [1] - 21:17 assembled [1] - 122:13 asserted [1] - 114:25 assess [6] - 14:11, 14:14, 14:16, 32:14, 40:21, 44:20 assessed [1] - 12:12 assigned [1] - 118:7 assignment [2] - 57:15, 74:14 assume [2] - 42:12, 109:4 assumed [1] - 119:13 assuming [2] - 41:20, 53:18 assumption [1] - 42:7 AT [1] - 5:3 athletes [3] - 47:12, 48:1, 48:7 attend [2] - 29:16, 94:1 attention [1] - 49:24 attorney's [2] - 61:14, 95:21 attorneys [2] - 56:1, 126:13 aunt [1] - 92:10 Austin [1] - 77:14 authority [1] - 114:18 automatic [1] - 82:16 automatically [1] - 82:19 automobile [1] - 29:16 available [2] - 64:10, 64:19 avoid [1] - 123:16	BAILIFF [2] - 52:4, 55:7 bailliffs [1] - 52:16 balance [1] - 42:18 Bambi [1] - 59:23 bank [1] - 79:15 base [2] - 32:23, 86:20 Base [1] - 92:20 based [17] - 29:21, 32:9, 32:10, 32:17, 41:22, 45:13, 65:14, 66:7, 66:23, 71:18, 76:7, 98:1, 105:11, 113:15, 115:15, 120:6, 121:3 battle [1] - 80:1 bear [1] - 69:15 bears [1] - 69:15 become [1] - 59:19 begin [1] - 122:20 beginning [1] - 123:5 behind [1] - 76:15 belief [2] - 114:24, 115:3 benefit [1] - 41:9 best [2] - 10:10, 126:10 better [3] - 8:1, 62:2, 85:5 between [7] - 19:23, 20:6, 22:24, 46:23, 99:11, 110:16, 115:8 beyond [34] - 16:1, 17:8, 17:10, 17:11, 17:15, 17:20, 19:2, 19:6, 23:16, 23:24, 26:5, 26:13, 30:22, 37:10, 39:1, 42:24, 43:7, 43:23, 43:24, 44:11, 70:5, 81:6, 81:15, 81:22, 82:1, 83:22, 112:5, 112:25, 113:8, 113:20, 113:22, 115:6, 115:7, 115:18 big [2] - 63:17, 104:18 biggest [1] - 64:5 binds [1] - 8:11 bingo [2] - 59:25, 60:2 birthday [1] - 31:11 bit [12] - 6:18, 8:16, 13:17, 28:7, 57:10, 89:25, 92:4, 95:1, 97:8, 104:8, 113:25, 119:21 blame [1] - 45:17 blameworthiness [6] - 27:14, 27:15, 30:13, 46:11, 84:18, 85:3 blameworthy [2] -	27:6, 27:19 blog [1] - 124:10 blown [1] - 68:3 Board [2] - 102:24, 103:3 Bob [1] - 67:15 body [1] - 103:12 bomb [1] - 68:5 bombing [1] - 106:22 bond [6] - 52:1, 52:11, 52:18, 52:23, 54:17, 54:19 bonded [1] - 52:19 bondsman [4] - 52:23, 52:25, 53:4, 53:11 bondsman's [1] - 54:18 born [1] - 59:17 boss [1] - 70:13 bound [2] - 11:19, 90:15 box [1] - 120:21 boy [2] - 111:15, 114:16 brain [1] - 28:19 break [8] - 17:4, 20:16, 30:17, 30:20, 51:10, 51:11, 125:8, 125:18 bring [14] - 15:25, 16:6, 31:4, 31:21, 42:16, 51:25, 52:3, 52:4, 73:24, 74:1, 74:7, 86:18, 101:8, 119:18 bringing [1] - 101:9 brings [2] - 68:23, 68:25 BRISSETTE [8] - 51:4, 51:7, 51:17, 57:7, 65:9, 89:14, 122:2, 122:6 Brissette [7] - 6:6, 56:10, 90:1, 90:13, 104:10, 106:14, 113:3 Brissette.... [1] - 4:9 broad [2] - 21:9, 22:17 broader [1] - 45:9 broken [1] - 48:14 brother [5] - 60:6, 60:9, 62:12, 62:23, 96:12 brother-in-law [5] - 60:6, 60:9, 62:12, 62:23, 96:12 brought [3] - 16:1, 46:5, 92:10 buddies [1] - 68:14 buddy [1] - 68:17	building [2] - 61:5, 68:3 building's [1] - 7:23 burden [28] - 6:22, 17:9, 17:14, 24:4, 26:6, 26:9, 26:10, 26:11, 26:16, 26:17, 30:21, 30:24, 31:20, 37:13, 40:19, 42:19, 70:5, 71:9, 71:16, 81:1, 81:5, 82:1, 83:19, 86:3, 86:24, 86:25, 118:7, 119:18 burdens [1] - 114:2 buried [1] - 103:13 business [3] - 11:15, 19:9, 126:11 buy [3] - 107:5, 107:7, 107:8 BX [1] - 92:21 BY [11] - 7:6, 7:7, 25:14, 32:22, 33:24, 33:25, 57:6, 57:7, 65:9, 89:18, 89:19	carry [1] - 34:7 Carson [1] - 60:3 Carter [3] - 95:14, 95:17, 95:24 case [101] - 5:24, 6:1, 6:10, 6:23, 8:9, 8:21, 9:19, 12:12, 13:25, 14:12, 26:23, 27:5, 27:11, 28:12, 28:14, 29:4, 29:7, 31:7, 35:7, 35:17, 35:22, 37:1, 37:8, 37:15, 38:10, 50:19, 52:12, 54:2, 55:4, 56:1, 56:13, 57:13, 61:5, 61:8, 62:9, 62:12, 63:19, 65:13, 65:23, 66:4, 66:24, 67:9, 69:1, 69:8, 70:12, 70:20, 72:15, 72:23, 72:24, 73:8, 73:21, 73:22, 74:4, 74:23, 83:19, 84:20, 85:24, 87:3, 87:12, 87:13, 88:20, 89:21, 90:6, 90:21, 91:11, 91:20, 95:15, 95:22, 96:1, 96:8, 96:9, 96:23, 97:10, 100:12, 107:21, 113:6, 121:2, 122:10, 123:12, 123:17, 123:22, 123:23, 124:1, 124:2, 124:3, 124:5, 124:7, 124:9, 124:11, 124:13, 124:14, 124:16, 124:18, 124:19, 124:23, 124:24 cases [1] - 9:14 cash [1] - 52:23 catch [1] - 108:11 Catholic [1] - 93:24 caused [2] - 37:25, 100:14 causes [2] - 39:6, 77:3 cell [1] - 124:17 cemetery [1] - 103:13 central [1] - 50:24 certain [12] - 34:22, 39:7, 64:16, 69:9, 71:3, 91:20, 96:1, 97:22, 98:6, 102:10, 109:16, 109:17 certainty [4] - 19:22, 20:3, 77:20, 78:9 certify [3] - 127:4, 127:12, 127:16 cetera [1] - 29:13 chair [1] - 55:9
B			C	
baby [1] - 94:8 background [5] - 29:13, 29:23, 44:3, 113:9, 118:17 bad [9] - 16:3, 34:23, 39:17, 74:1, 74:2, 78:1, 111:3, 111:8 bad's [1] - 78:4 badge [2] - 50:24, 123:10 badly [1] - 91:24 bailed [1] - 52:20 bailliff [1] - 50:24			calendar [1] - 102:19 California [2] - 35:5, 35:7 cannot [1] - 67:5 capable [2] - 21:20, 25:5 capital [56] - 12:19, 13:12, 13:17, 13:19, 14:2, 14:22, 14:25, 15:1, 16:16, 18:19, 18:21, 27:2, 28:15, 33:10, 37:3, 37:17, 38:3, 38:12, 38:13, 38:20, 39:15, 42:25, 43:7, 57:13, 63:13, 63:19, 64:1, 64:9, 64:16, 64:17, 64:25, 65:17, 65:18, 67:8, 67:10, 72:15, 73:22, 76:21, 81:3, 102:11, 102:14, 103:9, 103:19, 103:21, 103:25, 104:2, 106:2, 106:9, 107:16, 107:24, 107:25, 108:4, 108:17, 108:20, 117:19 car [5] - 104:18, 104:19, 106:20, 114:5, 114:7 carries [1] - 102:15	

<p>challenge [2] - 50:4, 122:1</p> <p>Challenge..... [1] - 4:7</p> <p>Challenge..... [1] - 4:4</p> <p>challenges [1] - 125:11</p> <p>chambers [1] - 127:10</p> <p>chance [5] - 19:17, 57:14, 64:3, 78:16, 110:13</p> <p>change [3] - 64:15, 92:25, 123:6</p> <p>changed [5] - 6:9, 6:13, 56:11, 56:16, 92:24</p> <p>changing [1] - 123:5</p> <p>Chapter [1] - 126:4</p> <p>character [5] - 16:3, 29:12, 29:23, 74:2, 113:9</p> <p>charge [7] - 16:18, 16:19, 65:25, 71:12, 71:13, 87:21, 89:8</p> <p>charged [6] - 15:11, 24:19, 24:23, 60:20, 69:3, 95:3</p> <p>charges [1] - 52:2</p> <p>cheated [1] - 68:18</p> <p>check [4] - 44:19, 47:25, 48:21, 50:25</p> <p>checked [2] - 64:1, 74:23</p> <p>child [4] - 10:18, 101:8, 114:18, 119:9</p> <p>children [1] - 57:19</p> <p>choice [3] - 14:13, 14:16, 69:24</p> <p>chooses [3] - 69:20, 111:14, 113:4</p> <p>chose [2] - 59:12, 70:3</p> <p>chosen [2] - 20:5, 77:16</p> <p>Christmas [3] - 92:15, 107:4, 107:5</p> <p>chronological [1] - 125:10</p> <p>chronologically [1] - 125:8</p> <p>church [4] - 68:10, 68:12, 93:19</p> <p>circumstance [12] - 26:22, 28:3, 29:3, 29:11, 29:12, 29:19, 30:1, 117:25, 118:7, 118:11, 119:1, 119:23</p> <p>circumstances [6] - 13:1, 26:22, 27:21, 29:22, 30:1, 117:25</p>	<p>citizen [1] - 59:20</p> <p>City [3] - 60:3, 68:3, 106:22</p> <p>civic [1] - 75:4</p> <p>civil [1] - 114:4</p> <p>claim [1] - 103:12</p> <p>clarified [1] - 35:25</p> <p>classes [5] - 60:23, 61:2, 61:9, 62:1, 96:5</p> <p>clear [4] - 72:12, 82:9, 114:20, 114:21</p> <p>clerk [1] - 47:4</p> <p>client [1] - 34:4</p> <p>cliff [1] - 104:20</p> <p>close [3] - 34:9, 34:10, 49:9</p> <p>closer [3] - 18:5, 23:22, 81:20</p> <p>closure [3] - 101:3, 101:9, 102:3</p> <p>code [1] - 67:16</p> <p>Code [5] - 37:6, 37:7, 41:2, 126:5, 126:9</p> <p>collection [1] - 48:11</p> <p>collectively [1] - 79:8</p> <p>colleges [1] - 29:17</p> <p>comfort [1] - 41:7</p> <p>comfortable [5] - 36:7, 37:20, 41:3, 91:18, 105:1</p> <p>comment [5] - 10:1, 10:25, 36:9, 45:12, 45:13</p> <p>comments [1] - 12:4</p> <p>commission [1] - 43:1</p> <p>commit [11] - 17:16, 18:19, 18:21, 19:3, 20:12, 25:15, 25:17, 103:25, 109:17, 109:18, 111:23</p> <p>commits [4] - 12:19, 13:4, 67:10, 98:2</p> <p>committed [9] - 13:1, 16:5, 27:19, 28:19, 46:18, 76:23, 104:6, 111:25, 118:17</p> <p>committing [1] - 22:3</p> <p>common [1] - 115:16</p> <p>community [2] - 101:19, 101:22</p> <p>compass [1] - 28:23</p> <p>completely [2] - 24:14, 28:20</p> <p>complies [1] - 83:12</p> <p>comprehension [1] - 41:7</p> <p>concentrate [1] - 24:17</p> <p>concept [3] - 22:11,</p>	<p>30:18, 66:20</p> <p>concern [3] - 45:12, 46:20, 49:2</p> <p>concerned [1] - 42:20</p> <p>concerning [1] - 124:5</p> <p>concerns [1] - 76:11</p> <p>conduct [4] - 97:22, 98:6, 124:1, 124:8</p> <p>conducted [2] - 35:2, 52:12</p> <p>conformity [1] - 126:4</p> <p>confronted [1] - 5:25</p> <p>congratulations [2] - 57:21, 93:16</p> <p>connection [2] - 95:17, 97:11</p> <p>conscience [3] - 98:5, 116:21, 117:2</p> <p>consider [18] - 10:15, 15:18, 15:19, 15:23, 22:4, 22:6, 22:7, 45:14, 73:3, 73:6, 73:24, 84:16, 99:21, 100:16, 100:22, 106:16, 109:22</p> <p>consideration [8] - 24:8, 43:11, 43:12, 44:14, 46:3, 73:7, 73:15, 112:18</p> <p>constitute [4] - 17:17, 18:4, 18:12, 25:2</p> <p>constitutes [3] - 21:18, 106:24, 115:8</p> <p>contact [1] - 96:19</p> <p>contain [4] - 21:5, 21:6, 21:9, 26:4</p> <p>contains [2] - 21:9, 127:5</p> <p>contemplates [1] - 85:13</p> <p>contempt [1] - 52:2</p> <p>context [4] - 42:21, 80:6, 80:19, 88:21</p> <p>continue [3] - 97:5, 112:12, 116:17</p> <p>continuing [9] - 14:3, 17:17, 18:4, 18:13, 18:19, 18:22, 23:18, 25:2, 27:4</p> <p>control [1] - 102:25</p> <p>conversation [3] - 34:7, 36:13, 41:10</p> <p>conveying [1] - 124:15</p> <p>convicted [9] - 13:11, 14:1, 14:22, 15:23, 16:15, 28:15, 41:16, 102:17, 108:4</p> <p>conviction [4] - 15:12, 15:15, 114:24, 115:3</p>	<p>convince [1] - 113:7</p> <p>convinced [1] - 112:25</p> <p>convincing [2] - 114:20, 114:21</p> <p>copy [1] - 123:15</p> <p>correct [15] - 5:15, 7:25, 9:8, 44:4, 51:16, 51:18, 51:23, 52:7, 55:13, 55:14, 95:15, 95:16, 100:22, 100:23, 127:5</p> <p>correctly [1] - 127:14</p> <p>cost [1] - 127:16</p> <p>counsel [1] - 127:7</p> <p>counseling [3] - 94:5, 94:11, 94:15</p> <p>countries [1] - 48:6</p> <p>country [1] - 119:5</p> <p>County [5] - 9:4, 9:20, 37:24, 60:20, 127:3</p> <p>COUNTY [2] - 127:1, 127:18</p> <p>couple [5] - 13:23, 57:15, 65:24, 67:15, 68:14</p> <p>course [7] - 11:13, 12:21, 24:9, 28:11, 32:23, 45:7, 104:6</p> <p>court [20] - 5:10, 8:4, 8:6, 8:16, 9:14, 17:1, 18:10, 32:5, 32:14, 34:24, 35:11, 35:16, 61:1, 61:6, 62:6, 78:18, 109:15, 114:4, 124:6, 127:10</p> <p>COURT [68] - 5:5, 5:7, 5:13, 5:17, 5:21, 6:3, 6:12, 6:16, 7:2, 33:23, 49:25, 50:4, 50:7, 50:9, 50:12, 50:14, 50:17, 51:2, 51:6, 51:9, 51:13, 51:18, 51:23, 51:25, 52:5, 52:9, 52:15, 52:18, 52:22, 53:1, 53:8, 53:11, 53:13, 53:17, 53:23, 54:1, 54:7, 54:11, 54:15, 54:21, 54:24, 55:2, 55:6, 55:8, 55:12, 55:15, 55:18, 56:6, 56:15, 56:20, 56:25, 65:3, 65:8, 89:16, 121:21, 121:25, 122:3, 122:5, 122:7, 122:9, 122:16, 122:19, 122:25, 123:2, 123:9, 125:3,</p>	<p>125:7, 125:16</p> <p>Court [13] - 5:7, 5:9, 116:16, 116:19, 122:22, 123:7, 126:3, 126:19, 126:19, 127:2, 127:3, 127:22, 127:23</p> <p>Court's [4] - 65:25, 71:12, 87:21, 89:8</p> <p>courtroom [5] - 61:19, 69:19, 86:10, 86:21, 124:5</p> <p>create [1] - 126:13</p> <p>credentials [1] - 48:1</p> <p>credible [2] - 114:10, 114:11</p> <p>crime [25] - 10:13, 12:15, 13:4, 13:5, 13:8, 15:10, 24:23, 39:22, 46:8, 46:23, 64:9, 64:16, 67:8, 72:9, 72:18, 82:25, 97:25, 98:2, 98:12, 98:21, 101:20, 101:21, 103:22, 118:16</p> <p>crimes [4] - 16:4, 64:20, 74:5, 74:9</p> <p>Criminal [2] - 37:6, 41:2</p> <p>criminal [47] - 9:15, 12:21, 13:14, 13:18, 15:8, 17:16, 19:3, 20:10, 20:12, 20:17, 20:22, 20:23, 20:24, 20:25, 21:15, 21:18, 22:3, 25:9, 25:17, 32:23, 38:6, 38:10, 39:20, 48:14, 67:12, 67:13, 67:17, 68:2, 68:21, 71:24, 72:1, 76:24, 78:20, 78:24, 79:12, 79:13, 104:6, 104:7, 106:1, 106:3, 106:23, 109:18, 109:21, 110:5, 111:23, 111:25</p> <p>CSR [2] - 126:18, 127:21</p> <p>culpability [1] - 29:24</p> <p>Cummings [6] - 6:4, 34:3, 51:19, 56:8, 64:4, 89:20</p> <p>CUMMINGS [5] - 33:25, 50:8, 51:20, 53:5, 125:17</p> <p>Cummings [1] - 4:4</p> <p>cumulative [1] - 116:23</p>
---	---	---	--	---

<p>curious [1] - 41:25 custody [3] - 52:16, 53:19, 71:4</p> <p>D</p> <p>dad [2] - 52:20, 53:9 daily [1] - 47:25 damage [1] - 114:6 damaged [1] - 114:7 danger [5] - 44:12, 81:7, 81:12, 81:16, 117:20 dangerousness [4] - 14:4, 40:12, 74:16, 109:14 DARRYL [2] - 4:3, 7:3 Darryl [2] - 5:6, 5:14 DAs [1] - 70:12 Date [2] - 126:18, 127:22 date [5] - 24:18, 37:23, 39:7, 69:9, 123:4 dates [1] - 6:14 daughter [4] - 94:4, 94:7, 94:21, 107:6 David [1] - 53:4 days [2] - 35:8, 54:9 dead [1] - 105:8 deal [2] - 58:24, 74:15 dealing [1] - 38:11 deals [1] - 14:6 death [68] - 5:24, 10:9, 10:12, 10:16, 10:20, 11:25, 12:12, 12:15, 12:17, 12:23, 13:4, 13:6, 13:9, 13:25, 14:14, 18:6, 18:18, 18:20, 23:23, 26:24, 28:9, 29:5, 30:2, 30:15, 32:3, 32:6, 33:10, 33:17, 36:19, 37:25, 38:1, 40:15, 40:21, 40:22, 44:20, 56:4, 63:13, 63:25, 64:19, 67:5, 69:11, 81:21, 82:11, 84:2, 85:5, 88:14, 97:1, 97:11, 97:19, 97:23, 98:5, 98:7, 98:17, 100:3, 100:15, 100:25, 101:5, 102:11, 103:20, 108:6, 108:17, 108:20, 109:9, 117:6, 117:12, 117:14, 120:11, 121:8 decide [20] - 18:18,</p>	<p>26:20, 29:21, 30:25, 39:14, 40:20, 68:20, 72:23, 91:18, 98:25, 99:10, 107:4, 107:13, 107:21, 107:22, 108:3, 108:16, 110:22, 117:24, 120:5 decided [6] - 18:16, 42:24, 43:7, 44:8, 44:11, 114:14 decides [4] - 13:20, 38:9, 39:1, 112:13 deciding [2] - 76:7, 112:18 decision [25] - 40:1, 40:4, 40:15, 41:12, 41:13, 43:6, 49:4, 49:10, 63:9, 66:15, 73:9, 84:24, 87:20, 91:15, 97:4, 101:20, 101:23, 103:1, 103:4, 103:6, 106:16, 107:12, 110:23, 119:12, 121:3 decision-making [1] - 107:12 decisions [3] - 32:24, 86:20, 97:1 defend [2] - 104:15, 105:16 DEFENDANT [2] - 33:24, 51:24 defendant [19] - 5:4, 17:16, 19:3, 32:13, 46:4, 51:12, 69:2, 69:9, 69:25, 70:11, 70:25, 74:2, 74:21, 76:19, 81:20, 98:1, 102:9, 109:6, 111:12 defendant's [7] - 16:3, 27:13, 29:22, 31:10, 46:11, 84:18, 85:2 Defendant's [3] - 4:4, 4:7, 4:9 defense [12] - 26:17, 30:24, 31:21, 33:23, 50:7, 51:5, 51:6, 86:17, 89:16, 98:19 Defense [5] - 111:17, 118:9, 122:3, 122:7, 125:16 DEFENSE [1] - 89:18 defenses [1] - 43:3 deference [1] - 35:20 define [5] - 105:25, 106:19, 110:1, 110:7, 113:22 defined [7] - 19:6,</p>	<p>19:8, 67:16, 79:5, 97:21, 114:22 defines [1] - 110:8 definition [13] - 12:18, 19:9, 19:16, 27:9, 45:9, 45:13, 46:15, 67:22, 76:22, 97:19, 99:7, 106:11, 114:9 degree [4] - 38:15, 109:22, 114:9, 114:10 deliberate [3] - 22:14, 66:4, 116:17 deliberating [1] - 28:14 deliberation [2] - 18:9, 74:13 deliberations [1] - 32:4 dennis [1] - 49:25 DENNIS [2] - 4:3, 7:3 Dennis [7] - 5:6, 5:15, 5:17, 7:8, 33:19, 34:1, 50:18 department [1] - 59:10 Department [2] - 47:3, 59:7 deployed [1] - 58:18 Deputy [4] - 5:7, 126:19, 127:2, 127:22 deputy [2] - 5:9, 53:24 described [1] - 44:18 deserve [2] - 64:2, 100:4 designed [1] - 5:22 desire [1] - 98:5 despite [1] - 70:10 determination [1] - 49:13 determine [1] - 110:24 determines [1] - 76:2 dictate [1] - 101:18 die [3] - 39:4, 77:3, 103:11 difference [2] - 90:4, 114:3 different [22] - 8:11, 13:17, 14:15, 17:5, 24:14, 43:16, 48:6, 48:25, 64:8, 64:9, 66:21, 68:11, 79:3, 99:6, 99:8, 102:13, 103:24, 105:5, 108:1, 109:5, 110:7, 118:24 difficult [2] - 57:23, 71:10 difficulty [1] - 35:6 DIRE [4] - 7:6, 33:24,</p>	<p>57:6, 89:18 Dire [4] - 4:3, 4:4, 4:9, 4:9 dire [1] - 8:3 disagree [3] - 11:22, 91:3 disclosure [1] - 126:9 discuss [3] - 123:23, 123:25, 124:22 discussed [1] - 6:13 discussion [2] - 15:4, 56:17 discussions [1] - 26:16 dismissed [4] - 61:8, 61:25, 125:6, 125:9 Disney [1] - 59:22 disposed [1] - 96:1 disposition [1] - 96:8 disregard [2] - 71:7, 71:17 distinct [1] - 103:21 distinction [3] - 103:17, 110:16, 115:8 District [4] - 122:22, 126:19, 127:3, 127:23 district [2] - 61:14, 95:21 DNA [1] - 48:21 docket [1] - 35:13 document [2] - 47:24, 66:1 domestic [5] - 60:12, 60:17, 61:18, 62:23, 95:3 Don [1] - 95:14 done [12] - 10:5, 11:12, 27:7, 27:21, 36:12, 36:25, 39:16, 39:24, 42:16, 45:7, 49:17, 74:6 door [1] - 111:12 doubt [39] - 17:8, 17:10, 17:11, 17:15, 17:20, 19:2, 19:6, 23:16, 23:24, 26:5, 26:13, 30:23, 37:11, 39:1, 42:25, 43:7, 43:23, 43:25, 44:12, 70:6, 81:6, 81:16, 81:22, 82:2, 83:22, 89:7, 112:25, 113:8, 113:21, 113:22, 115:6, 115:7, 115:9, 115:12, 115:15, 115:16, 115:18, 115:21 down [14] - 13:19,</p>	<p>17:4, 20:16, 20:23, 30:17, 30:20, 61:4, 65:6, 75:1, 77:14, 95:21, 107:3, 111:13, 115:14 downstairs [1] - 85:22 downtown [1] - 10:2 drive [3] - 10:2, 29:16, 68:16 drives [1] - 88:22 DUI [1] - 60:7 duly [2] - 7:4, 57:4 during [13] - 12:20, 24:9, 38:6, 47:7, 67:11, 67:13, 74:3, 76:24, 81:1, 104:6, 106:12, 111:2, 119:17 duty [5] - 58:7, 75:1, 75:4, 91:8, 104:1 DWI [2] - 62:23, 96:13 dying [1] - 118:2</p> <p>E</p> <p>E-7 [2] - 58:15, 58:16 e-mails [1] - 124:15 educators [1] - 23:6 effect [2] - 17:24, 85:15 effort [1] - 39:24 either [11] - 6:16, 10:6, 10:18, 11:12, 22:5, 26:18, 39:6, 55:19, 77:2, 103:10, 111:8 either/or [1] - 11:3 element [1] - 69:7 elements [5] - 37:3, 64:9, 69:5, 69:6, 70:5 eligibility [1] - 102:21 eligible [5] - 18:20, 102:17, 102:23, 103:6, 103:10 end [7] - 8:10, 72:8, 72:10, 72:24, 73:1, 77:21, 112:17 ended [2] - 92:16, 96:4 enforcement [1] - 62:6 engage [1] - 107:13 enjoy [1] - 59:4 ensure [1] - 117:12 entire [1] - 84:20 entitled [2] - 81:10, 104:14 enunciate [1] - 115:22 equipment [1] - 59:1 escape [1] - 23:8</p>
--	---	--	---	--

<p>especially [1] - 69:19 essentially [1] - 40:10 establish [3] - 41:6, 114:23, 115:2 et [1] - 29:13 ethic [1] - 67:4 ethical [2] - 12:10, 33:15 evaluate [1] - 44:15 evaluation [3] - 43:16, 44:7, 71:8 events [3] - 31:10, 124:11, 124:12 everyday [4] - 19:9, 67:20, 77:23, 78:8 evidence [72] - 8:13, 15:18, 15:19, 15:21, 15:24, 16:1, 16:2, 16:3, 16:4, 16:10, 16:12, 16:16, 16:17, 24:9, 27:10, 27:12, 30:10, 30:12, 31:1, 31:4, 31:19, 32:9, 32:10, 32:17, 32:24, 41:11, 44:15, 46:4, 46:23, 49:3, 49:5, 65:15, 66:14, 71:18, 73:13, 73:20, 73:23, 73:25, 74:1, 83:4, 84:16, 84:17, 84:21, 84:23, 85:1, 85:9, 85:14, 86:21, 87:1, 87:7, 87:14, 88:3, 88:5, 105:3, 111:4, 114:8, 114:10, 114:11, 114:20, 114:21, 114:23, 115:1, 118:6, 118:12, 118:13, 118:15, 120:1, 121:2, 121:3, 127:6 exactly [4] - 10:10, 23:2, 23:13, 32:10 EXAMINATION [4] - 7:6, 33:24, 57:6, 89:18 example [4] - 28:6, 28:13, 31:16, 31:18 examples [5] - 67:25, 68:8, 68:19, 105:20, 106:14 except [2] - 49:17, 103:2 exceptional [1] - 93:18 excuse [6] - 36:13, 38:4, 51:15, 91:19, 97:20, 100:15 Excused [1] - 4:6 executed [1] - 77:4</p>	<p>execution [1] - 39:7 exercise [6] - 36:3, 49:9, 50:9, 50:14, 122:5, 125:13 exhibits [2] - 66:10, 127:14 exist [2] - 14:22, 16:13 existing [1] - 126:10 expanded [1] - 7:23 expected [1] - 125:1 expenses [1] - 53:2 experience [6] - 34:19, 35:3, 35:21, 43:18, 49:18, 124:16 experienced [1] - 28:25 experiences [1] - 28:22 expert [6] - 41:19, 41:20, 42:5, 42:11, 42:14, 42:17 experts [1] - 41:22 Expiration [2] - 126:18, 127:22 explain [2] - 17:4, 91:24 explained [1] - 8:23 explaining [1] - 22:10 express [1] - 11:25 extreme [1] - 105:20</p>	<p>92:17, 93:22, 98:20, 100:9, 101:13, 103:12, 126:11 far [7] - 35:1, 36:1, 40:19, 41:20, 42:19, 43:13, 46:23 fate [2] - 75:6, 96:24 fault [2] - 65:9, 114:12 favor [2] - 63:25, 100:3 favorite [2] - 59:22, 60:2 federal [3] - 58:2, 58:4, 68:3 feelings [5] - 11:24, 63:7, 65:16, 65:17, 65:21 felonies [2] - 38:16, 38:17 felony [1] - 38:15 felt [2] - 32:8, 32:11 Fernandez [4] - 6:5, 34:4, 56:8, 89:21 few [2] - 50:2, 121:23 fill [2] - 63:14, 63:22 filled [3] - 6:7, 56:11, 63:16 final [3] - 11:2, 44:7, 44:18 financial [1] - 126:11 finder [1] - 114:25 findings [1] - 117:23 fine [2] - 108:14, 118:22 finish [2] - 25:12, 65:4 firearm [4] - 69:10, 69:12, 69:16, 69:23 firm [2] - 114:23, 115:2 first [44] - 6:23, 7:4, 8:24, 12:6, 14:2, 15:18, 15:20, 16:1, 16:7, 17:7, 24:15, 24:16, 26:2, 31:3, 31:9, 34:24, 38:15, 40:19, 57:4, 57:11, 67:3, 68:1, 72:10, 73:23, 74:4, 77:18, 79:7, 81:19, 83:18, 85:22, 87:4, 87:16, 90:8, 90:17, 92:11, 92:14, 94:20, 108:24, 109:13, 111:6, 112:5, 116:2, 117:7, 117:8 first-degree [1] - 38:15 fit [1] - 99:6 five [13] - 9:6, 47:23, 57:19, 57:20, 57:23,</p>	<p>92:23, 93:13, 94:23, 99:4, 99:11, 99:15, 100:17, 100:22 fixing [1] - 105:10 flight [1] - 111:13 floor [4] - 85:23, 107:7, 107:8, 122:22 folks [3] - 68:1, 68:6, 77:14 follow [30] - 8:11, 8:15, 8:18, 11:19, 11:21, 12:8, 33:1, 33:2, 36:23, 37:8, 37:11, 42:15, 65:22, 66:22, 68:25, 70:19, 71:2, 71:15, 71:19, 73:17, 75:17, 84:10, 84:12, 86:14, 88:17, 89:6, 90:15, 91:8, 91:9, 123:18 followed [1] - 8:15 following [1] - 80:24 follows [2] - 7:5, 57:5 food [1] - 93:5 foregoing [1] - 127:5 forget [1] - 10:6 forgot [3] - 54:6, 54:10, 63:2 form [2] - 28:22, 36:18 format [1] - 8:15 formed [1] - 28:20 Fort [7] - 59:7, 62:17, 68:10, 68:16, 126:20, 127:24 forth [3] - 22:24, 68:25, 76:7 four [6] - 34:21, 35:9, 47:23, 59:21, 106:21 fred [1] - 89:20 Fred [3] - 6:4, 34:3, 56:8 free [4] - 22:15, 22:18, 91:25, 105:10 Freeway [2] - 126:20, 127:23 front [4] - 50:1, 52:10, 53:19, 121:22 full [4] - 35:8, 73:14, 99:21, 100:16 function [1] - 11:8 functioning [1] - 7:25 future [20] - 14:4, 20:4, 25:1, 25:3, 25:4, 40:12, 44:12, 74:16, 78:22, 78:23, 81:7, 81:12, 81:16, 109:14, 109:18, 110:25, 111:24, 112:12, 112:19, 117:20</p>	<p>G</p> <p>Gallagher [1] - 53:5 games [2] - 48:3, 48:9 gate [1] - 52:6 gathered [1] - 73:8 generally [3] - 36:18, 63:25, 100:2 gentleman [1] - 44:11 GILL [11] - 5:6, 7:7, 25:14, 32:22, 33:21, 50:6, 50:11, 50:13, 50:16, 57:2, 125:15 Gill [2] - 6:6, 56:10 gill [17] - 34:6, 36:6, 36:11, 39:13, 39:17, 41:3, 45:2, 45:6, 45:21, 62:8, 64:4, 65:24, 67:14, 70:22, 72:7, 81:5, 81:25 Gill..... [1] - 4:3 girl [1] - 94:9 girls [1] - 93:10 given [8] - 13:25, 23:20, 27:22, 32:2, 32:25, 42:10, 44:25, 123:14 God [1] - 11:1 Gonzalez [3] - 52:10, 53:20, 63:18 Google [1] - 124:6 government [2] - 58:2, 58:5 Government [2] - 126:5, 126:9 governor [1] - 103:3 grandkids [1] - 9:10 grandmother [1] - 119:2 gravity [1] - 39:10 great [2] - 91:9, 120:24 greater [3] - 78:13, 114:9, 114:10 green [2] - 55:9, 115:13 grenade [1] - 106:20 ground [1] - 76:15 group [3] - 64:5, 64:6 growing [2] - 57:24, 119:2 guard [1] - 47:7 guards [3] - 23:1, 23:2, 80:14 guess [11] - 12:25, 22:19, 34:21, 46:15, 58:6, 59:16, 59:21, 59:23, 106:15, 111:1, 115:8</p>
---	---	---	--	---

<p>guilt [1] - 43:23 guilt/innocence [10] - 13:15, 15:8, 26:10, 43:13, 71:23, 74:4, 81:2, 82:17, 82:18, 83:7 guilty [36] - 15:10, 15:13, 15:14, 17:11, 24:22, 27:2, 39:3, 39:14, 40:11, 40:19, 48:22, 69:25, 70:3, 70:11, 72:17, 72:20, 72:21, 76:21, 81:3, 82:15, 82:18, 99:10, 100:13, 102:10, 105:11, 107:25, 108:17, 108:20, 109:7, 109:8, 112:3, 113:21, 117:19, 121:11 gun [1] - 80:1 gut [1] - 44:19 guy [8] - 22:14, 23:13, 24:17, 28:17, 32:6, 105:8, 110:8, 117:19 guys [1] - 48:17 gymnastic [1] - 48:8</p>	<p>19:16, 24:9, 31:1, 31:6, 33:5, 43:12, 44:17, 66:9, 73:23, 103:25, 120:7 hearing [1] - 105:2 heart [4] - 84:25, 117:3, 117:13, 120:5 heavy [1] - 59:1 heinous [1] - 72:25 help [6] - 64:14, 93:5, 96:5, 100:25, 111:10, 111:16 helped [3] - 119:1, 119:4, 119:5 helpful [1] - 42:3 helping [2] - 59:11, 94:25 hereby [1] - 127:4 herself [2] - 29:21, 31:1 hesitate [1] - 9:1 high [2] - 38:16, 72:10 high-level [1] - 38:16 highest [1] - 113:24 highlight [1] - 29:25 highly [1] - 35:5 himself [2] - 29:21, 31:1 history [4] - 39:20, 41:18, 44:2, 112:6 hold [6] - 62:4, 80:25, 81:5, 81:25, 86:4, 86:18 holds [1] - 70:22 home [7] - 16:25, 35:12, 39:3, 95:12, 95:13, 114:19, 116:8 homework [2] - 57:15, 74:13 homicide [6] - 69:8, 70:4, 71:25, 72:17, 72:20, 73:21 Homicides [1] - 97:25 homicides [4] - 67:12, 76:24, 78:22, 97:24 honest [1] - 35:24 honestly [1] - 91:16 Honor [9] - 33:22, 50:6, 50:8, 51:17, 51:22, 89:14, 89:17, 125:15, 125:17 hopefully [3] - 34:6, 41:23, 123:16 hospital [1] - 97:4 hot [1] - 6:20 hour [4] - 6:24, 11:11, 54:9, 56:21 hours [1] - 47:23 housing [2] - 47:11, 48:2</p>	<p>human [1] - 86:8 Hummel [8] - 6:4, 34:4, 51:21, 51:23, 56:7, 85:21, 121:11, 122:11 hummel's [1] - 85:23 hurt [1] - 20:15 husband [10] - 58:1, 60:18, 61:15, 93:7, 93:24, 95:3, 95:14, 95:18, 96:4, 112:15 hustled [1] - 63:16 hypothetical [1] - 107:3</p> <p style="text-align: center;">I</p> <p>illustration [1] - 28:13 impact [1] - 43:5 important [16] - 21:4, 21:5, 40:1, 44:4, 45:6, 49:8, 49:19, 53:20, 54:1, 68:23, 83:17, 88:20, 91:14, 105:15, 123:18, 123:25 imposed [2] - 30:8, 84:2 impression [1] - 53:20 incident [2] - 47:17, 95:2 include [3] - 22:17, 22:21, 104:22 included [2] - 61:17, 127:8 including [1] - 21:13 independent [1] - 101:23 independently [2] - 75:22, 106:17 indicated [4] - 38:21, 44:2, 48:13, 100:24 indictment [1] - 37:4, 37:18, 43:14, 69:1, 69:14, 69:21, 69:22, 74:6, 104:4, 104:11, 105:4 individual [38] - 5:22, 8:3, 13:11, 14:3, 14:21, 15:22, 18:4, 18:11, 21:19, 23:16, 23:22, 26:21, 28:7, 29:20, 37:2, 37:25, 38:22, 39:2, 39:3, 39:24, 44:4, 45:25, 46:6, 46:16, 55:25, 68:13, 69:10, 72:17, 99:23, 106:10, 106:11, 106:15, 111:19, 116:20, 116:25, 119:12 individual's [2] - 20:3, 20:12 individually [1] - 37:10 individuals [1] - 23:4 ineligible [1] - 76:19 information [6] - 36:5, 72:19, 72:22, 111:18, 124:3, 124:16 informed [2] - 63:9, 73:9 innocent [1] - 48:22 inquiry [1] - 24:21 insanity [1] - 43:5 insight [1] - 111:19 instead [4] - 26:23, 30:2, 30:15, 59:13 instruct [4] - 14:20, 76:17, 84:15, 87:22 instructed [1] - 36:23 Instructed..... [1] - 4:11 instruction [6] - 27:11, 102:16, 116:14, 116:16, 116:19, 120:1 instructions [6] - 71:12, 71:15, 123:15, 123:19, 123:24, 125:1 intend [1] - 104:11 intended [3] - 108:2, 108:3, 108:15 intentionally [3] - 98:4, 98:17 interest [1] - 59:9 interesting [3] - 34:22, 35:2, 105:24 Internet [3] - 124:1, 124:9, 124:22 intersections [1] - 79:25 interview [5] - 5:22, 8:10, 52:12, 55:25, 122:23 interviewed [1] - 125:11 intimate [1] - 60:15 introduce [2] - 39:21, 111:14 introduced [1] - 39:18 introspective [1] - 91:1 involved [4] - 95:10, 124:10, 124:23, 124:24 involving [1] - 47:17</p>	<p>Iraq [1] - 58:20 Israelis [1] - 47:18 Issue [17] - 14:5, 14:9, 16:21, 25:21, 25:23, 26:11, 26:12, 32:3, 41:1, 42:24, 43:21, 43:25, 44:10, 77:12, 81:4, 82:15, 82:16 issue [10] - 14:8, 15:9, 22:13, 23:13, 24:22, 26:3, 33:6, 40:20, 71:12, 108:1 issues [12] - 5:24, 5:25, 13:23, 13:24, 16:20, 43:4, 56:3, 62:22, 74:15, 87:21, 124:18, 124:22 itself [1] - 82:25</p> <p style="text-align: center;">J</p> <p>JACCI [2] - 126:18, 127:21 Jacci [3] - 5:8, 127:2, 127:12 jail [10] - 22:2, 48:19, 48:20, 60:6, 62:13, 62:15, 96:13, 96:14, 96:15 January [1] - 127:20 job [9] - 30:4, 32:19, 32:22, 33:11, 54:9, 59:11, 59:15, 70:14, 84:11 John [6] - 6:3, 34:4, 56:7, 89:21, 121:11, 122:11 Joint [1] - 92:20 Judge [6] - 52:10, 53:19, 57:2, 63:18, 116:14, 122:4 judge [35] - 14:11, 14:13, 14:16, 14:20, 16:17, 16:19, 16:25, 18:2, 18:10, 27:10, 32:14, 32:25, 33:2, 36:13, 51:4, 57:15, 65:23, 65:25, 66:7, 66:8, 66:24, 74:20, 75:9, 75:13, 75:14, 75:17, 76:2, 76:6, 76:17, 84:15, 87:22, 111:6 judges [1] - 35:20 judgment [3] - 11:2, 43:17, 43:18 jump [2] - 13:23, 15:7 JUNE [1] - 5:3 June [2] - 122:21,</p>
---	---	---	---

<p>125:4 JUROR [41] - 5:12, 5:16, 6:2, 6:11, 6:15, 7:1, 50:3, 51:1, 51:3, 52:8, 52:14, 52:17, 52:19, 52:24, 53:3, 53:6, 53:10, 53:12, 53:15, 53:22, 53:25, 54:5, 54:8, 54:14, 54:20, 54:23, 55:1, 55:5, 55:11, 55:14, 56:5, 56:14, 56:19, 56:24, 65:7, 121:24, 122:15, 122:24, 123:1, 123:8, 125:2 Juror [5] - 4:10, 4:10, 4:11, 5:14, 55:13 juror [74] - 5:20, 6:10, 7:4, 8:9, 8:21, 9:19, 11:8, 12:11, 22:1, 24:7, 26:21, 27:11, 27:13, 28:14, 29:2, 29:9, 29:20, 30:4, 30:25, 33:2, 33:11, 33:14, 36:1, 49:20, 50:19, 52:1, 54:16, 55:17, 57:4, 65:12, 65:13, 65:20, 66:6, 66:9, 66:23, 70:9, 70:18, 71:14, 73:2, 73:17, 74:23, 79:7, 80:24, 82:5, 82:23, 83:2, 84:17, 84:24, 85:7, 86:4, 86:14, 87:18, 88:3, 89:4, 89:15, 89:23, 90:14, 90:21, 91:10, 99:20, 99:24, 100:12, 106:15, 113:13, 115:12, 117:12, 119:6, 122:10, 122:12, 122:18, 123:11, 125:6 juror's [3] - 32:19, 32:22, 116:25 Jurors [1] - 51:15 jurors [18] - 6:1, 10:25, 18:9, 35:20, 39:2, 40:11, 46:12, 86:11, 90:5, 101:22, 105:11, 113:12, 113:13, 116:24, 117:7, 120:11, 120:24 JURORS [1] - 4:2 jurors' [1] - 110:2 jury [104] - 6:7, 9:22, 11:13, 11:14, 11:17, 13:19, 13:22, 13:25, 14:10, 14:21, 15:15,</p>	<p>15:18, 15:23, 16:10, 16:11, 16:15, 16:18, 16:19, 16:20, 17:8, 17:20, 17:21, 18:5, 18:9, 18:12, 18:22, 21:19, 22:14, 27:1, 34:9, 34:17, 38:9, 39:1, 50:24, 50:25, 56:3, 56:12, 66:3, 69:24, 74:7, 74:19, 75:1, 75:18, 75:19, 76:1, 76:5, 76:6, 76:18, 79:9, 81:6, 81:11, 81:15, 81:17, 82:1, 82:13, 83:9, 84:4, 84:11, 84:16, 84:19, 84:24, 88:20, 88:22, 91:8, 99:9, 101:12, 101:19, 105:2, 105:9, 106:8, 108:25, 109:4, 109:15, 111:10, 111:13, 111:18, 112:13, 112:17, 112:24, 113:3, 113:5, 115:2, 115:11, 116:5, 116:10, 116:14, 116:23, 117:11, 117:23, 118:12, 120:21, 121:1, 123:10, 123:16, 123:18, 124:11, 124:13, 124:16, 124:22 jury's [6] - 14:2, 15:9, 16:13, 32:4, 83:24 justice [5] - 9:15, 48:14, 50:23, 84:6, 101:10 justification [2] - 98:21, 99:2 justified [1] - 29:5 justify [1] - 73:13</p>	<p>killed [5] - 22:5, 76:25, 104:17, 106:9, 106:10 killer [1] - 105:10 killing [2] - 104:1, 106:21 kind [28] - 6:19, 8:14, 20:5, 20:8, 25:1, 34:7, 36:4, 36:25, 39:13, 41:12, 41:13, 42:6, 44:3, 44:17, 44:19, 44:20, 45:1, 79:24, 91:1, 91:10, 95:25, 102:10, 105:20, 105:24, 107:12, 110:4, 112:15, 119:24 kindness [1] - 119:7 knife [2] - 69:17, 69:24 knowing [9] - 23:21, 32:2, 32:6, 32:13, 33:13, 38:7, 43:1, 81:19, 88:13 knowingly [12] - 12:20, 37:25, 67:11, 69:9, 97:19, 97:21, 98:4, 98:6, 98:17, 100:14, 106:9, 106:10 knowledge [2] - 75:13, 126:10 knowledgeable [1] - 42:1</p>	<p>66:2, 66:7, 66:8, 66:13, 67:9, 68:25, 70:19, 71:20, 73:1, 73:13, 83:1, 83:2, 84:12, 85:13, 86:3, 87:22, 89:6, 90:9, 90:18, 90:21, 91:1, 91:5, 91:8, 91:9, 96:12, 97:9, 98:20, 99:19, 102:16, 104:22, 105:21, 113:14, 113:24, 121:14, 123:21, 123:22 laws [3] - 28:8, 33:2, 57:12 lawyer [1] - 124:6 lawyer's [1] - 61:7 lawyers [3] - 6:4, 35:1, 35:6 lays [1] - 66:2 lead [1] - 28:22 learned [1] - 48:9 least [4] - 7:22, 45:1, 46:3, 46:22 leave [5] - 35:16, 50:23, 103:15, 110:2, 110:6 leaving [2] - 80:20, 114:6 left [2] - 77:1, 103:12 legal [9] - 5:25, 56:3, 97:20, 100:15, 101:7, 102:4, 114:8, 119:18, 123:23 legally [3] - 77:1, 97:21, 114:22 legislation [1] - 83:14 legislature [4] - 18:16, 19:18, 20:5, 78:22 lengthy [1] - 25:25 less [5] - 27:5, 27:14, 27:18, 35:19, 102:19 lesser [1] - 98:13 lesson [1] - 54:21 level [7] - 28:3, 38:16, 41:7, 84:25, 85:16, 88:6, 88:10 liability [1] - 54:17 Life [1] - 14:24 life [66] - 6:9, 9:8, 10:5, 14:7, 14:17, 14:19, 14:24, 15:1, 18:11, 18:23, 22:9, 23:14, 23:18, 26:23, 28:24, 29:4, 30:2, 30:7, 30:14, 32:14, 38:17, 38:20, 38:22, 39:24, 40:18, 43:19, 64:2, 67:20, 72:7,</p>	<p>72:21, 74:18, 76:18, 77:1, 77:3, 77:24, 80:2, 85:4, 87:9, 97:1, 98:1, 99:1, 99:5, 99:11, 99:16, 100:4, 100:17, 102:12, 102:13, 102:14, 102:23, 103:9, 103:14, 103:18, 108:5, 108:8, 108:18, 108:23, 111:9, 116:7, 118:1, 118:2, 118:18, 119:24 likely [2] - 78:12, 88:14 limited [2] - 24:21, 24:22 line [2] - 57:23, 104:1 LinkedIn [1] - 124:21 list [1] - 69:5 LIST [1] - 4:1 listed [2] - 60:8, 60:12 listen [3] - 46:25, 64:4, 124:2 listening [1] - 41:9 live [4] - 64:3, 70:4, 90:22, 100:5 lived [3] - 9:4, 28:24, 111:12 lives [1] - 92:17 locked [2] - 22:9, 96:20 log [1] - 47:25 look [29] - 21:8, 25:1, 28:16, 44:7, 44:18, 46:6, 64:24, 65:9, 72:10, 77:10, 77:13, 78:15, 82:24, 83:3, 84:6, 84:20, 87:17, 88:21, 90:11, 91:2, 91:15, 110:21, 110:24, 112:24, 112:4, 113:6, 119:22, 121:2 looking [8] - 71:11, 72:14, 78:14, 78:16, 80:18, 80:19, 85:8, 118:15 lookout [1] - 88:3 Los [6] - 9:8, 9:13, 9:23, 10:2, 34:16, 47:3 loses [1] - 97:25 loss [1] - 102:6 lousy [1] - 70:14 love [1] - 93:4 low [2] - 72:8, 72:24 lower [1] - 77:21 lumps [1] - 119:17</p>
	<p>K</p>	<p>L</p>		
	<p>KATHERINE [1] - 4:7 keep [17] - 15:3, 57:23, 65:22, 66:13, 66:22, 73:2, 73:17, 77:8, 80:24, 82:6, 82:21, 82:23, 83:3, 85:7, 87:19, 88:2, 88:6 Keller [1] - 7:18 kept [1] - 47:11 kids [5] - 57:25, 77:25, 93:13, 100:9, 100:10 kill [2] - 69:10, 106:22</p>	<p>lady [1] - 111:12 language [2] - 21:8, 41:3 large [1] - 85:22 larger [1] - 64:5 Larry [4] - 6:4, 34:3, 56:8, 89:20 last [12] - 6:14, 7:12, 8:4, 8:6, 8:15, 13:21, 16:25, 21:21, 45:1, 49:7, 87:6, 123:3 lasted [2] - 34:20, 47:23 law [67] - 8:12, 8:17, 8:19, 11:19, 11:21, 12:2, 12:16, 12:17, 13:2, 13:3, 13:4, 15:5, 19:7, 19:8, 20:23, 32:24, 36:23, 46:22, 47:2, 60:6, 60:9, 62:5, 62:12, 62:23, 63:22, 65:14, 65:21, 65:22, 65:23,</p>		

lunch [2] - 35:16, 125:8	106:20, 119:17, 124:5 meant [1] - 109:8 mechanic [2] - 58:1, 59:2 mechanism [1] - 108:16 media [2] - 70:13, 124:2 meet [4] - 40:19, 61:4, 71:16, 82:1 meeting [2] - 6:14, 70:5 memory [1] - 77:13 mental [4] - 43:4, 43:5, 98:8, 98:13 mention [1] - 63:2 mentioned [1] - 12:14 merits [1] - 72:23 met [3] - 37:12, 71:8, 95:19 Mexico [7] - 59:17, 92:6, 92:12, 92:16, 92:18, 93:19, 93:20 microphone [2] - 6:17, 55:19 might [43] - 19:15, 19:17, 21:17, 27:6, 27:13, 27:18, 27:25, 28:1, 28:2, 28:16, 28:18, 29:2, 29:7, 29:9, 29:13, 31:14, 31:24, 35:13, 35:18, 35:19, 42:11, 43:5, 43:10, 45:14, 48:20, 66:1, 79:13, 84:17, 85:13, 87:18, 90:6, 90:10, 97:9, 99:6, 100:25, 106:15, 115:9, 116:13, 116:15, 121:15, 126:13 Miles [2] - 6:6, 56:9 military [4] - 29:17, 59:4, 74:25, 119:4 mind [29] - 15:4, 65:22, 66:14, 66:22, 67:22, 73:2, 73:18, 77:9, 79:12, 80:25, 82:6, 82:23, 83:3, 84:25, 85:8, 85:15, 87:19, 88:2, 88:6, 88:7, 88:11, 98:1, 100:19, 100:21, 114:25, 115:2, 117:3, 117:13, 119:8 mini [5] - 37:1, 52:3, 52:11, 56:16, 122:23 ministers [1] - 23:4 minute [2] - 29:9,	107:20 minutes [2] - 50:2, 121:23 mistake [1] - 105:11 mitigates [1] - 30:14 mitigating [38] - 26:22, 27:9, 27:12, 28:1, 28:3, 29:3, 29:10, 29:19, 30:1, 30:5, 30:7, 30:10, 30:12, 31:2, 31:6, 31:12, 31:19, 44:14, 45:22, 84:16, 84:21, 84:23, 85:1, 85:8, 85:14, 87:1, 87:17, 87:18, 88:3, 88:5, 117:25, 118:6, 118:10, 118:12, 119:1, 119:23 mitigation [10] - 14:7, 14:8, 40:13, 45:8, 45:14, 46:21, 46:24, 49:14, 74:17 molestation [2] - 10:18, 12:16 moment [1] - 50:11 Monday [2] - 122:20, 125:4 money [5] - 48:21, 53:9, 53:18, 54:18, 68:18 month [2] - 6:8, 56:12 months [2] - 92:11, 92:16 MOORE [4] - 89:17, 89:19, 122:4, 122:8 mOORE [1] - 121:20 Moore [4] - 6:5, 34:3, 56:8, 89:20 Moore.... [1] - 4:9 moral [10] - 12:10, 27:13, 28:22, 29:23, 30:13, 33:15, 46:11, 67:4, 84:18, 85:2 morally [3] - 27:6, 27:14, 27:18 morning [22] - 5:9, 5:11, 5:12, 5:18, 7:8, 7:9, 7:10, 8:10, 8:23, 11:12, 34:1, 34:2, 34:6, 36:12, 55:11, 55:12, 57:8, 65:11, 65:15, 89:1, 122:13, 123:10 MORRISON [1] - 4:7 most [4] - 46:12, 72:25, 86:11, 123:25 mother [1] - 47:2 mother-in-law [1] - 47:2	motivation [1] - 27:23 motivations [2] - 27:25, 28:1 move [5] - 6:17, 13:12, 22:24, 55:19, 81:20 moved [1] - 62:14 moves [2] - 15:16, 23:21 movie [1] - 59:22 MR [28] - 5:6, 7:7, 25:14, 32:22, 33:21, 33:25, 50:6, 50:8, 50:11, 50:13, 50:16, 51:4, 51:7, 51:17, 51:20, 53:5, 57:2, 57:7, 65:9, 89:14, 89:17, 89:19, 121:20, 122:2, 122:6, 122:8, 125:15, 125:17 multiple [1] - 104:4 murder [72] - 12:19, 13:12, 14:2, 14:22, 14:25, 15:1, 15:23, 16:16, 18:19, 18:21, 21:14, 25:15, 27:2, 28:16, 33:10, 34:20, 37:3, 37:18, 38:4, 38:7, 38:12, 38:13, 38:16, 39:15, 42:25, 43:7, 63:19, 64:1, 65:18, 67:10, 72:2, 72:6, 76:22, 81:3, 97:18, 97:20, 98:3, 98:9, 98:13, 98:18, 99:2, 99:10, 100:13, 101:4, 102:10, 102:11, 102:13, 102:14, 102:17, 102:24, 103:9, 103:19, 103:21, 103:25, 104:2, 104:4, 104:5, 106:1, 106:2, 106:9, 107:16, 107:21, 107:24, 107:25, 108:4, 108:17, 108:20, 113:4, 117:19 murders [10] - 12:20, 38:10, 43:2, 64:10, 67:11, 78:23, 99:15, 99:16, 106:4, 112:3 must [2] - 84:24, 114:12 MY [1] - 127:19 MySpace [1] - 124:20	N name [5] - 53:4, 53:7, 94:14, 94:19, 94:20 narrow [2] - 20:23, 46:21 natural [2] - 39:6, 77:3 nature [4] - 41:17, 42:17, 86:8, 94:11 necessarily [3] - 42:5, 101:11, 101:13 need [15] - 5:18, 6:17, 6:25, 15:3, 50:9, 51:25, 55:15, 55:18, 55:20, 89:1, 101:3, 108:11, 122:11, 122:21 needed [1] - 35:25 needs [1] - 72:25 negative [1] - 34:25 negligently [1] - 98:11 neighbor [1] - 111:16 nerve [2] - 6:20, 55:21 nervous [1] - 55:23 net [1] - 44:18 network [1] - 124:21 never [17] - 10:6, 14:22, 15:2, 22:15, 26:16, 30:23, 36:20, 38:23, 39:3, 80:20, 100:21, 102:3, 102:5, 103:10, 103:14, 112:4 new [1] - 54:9 next [8] - 20:10, 23:20, 25:23, 51:5, 80:1, 107:8, 110:8, 111:12 night [2] - 7:12, 7:19 nightgown [1] - 107:8 NIKKO [1] - 4:5 nikko [1] - 52:7 NO [2] - 126:18, 127:21 nobody [2] - 63:17, 97:16 none [1] - 90:5 normal [1] - 67:19 notable [1] - 26:3 NOTE [1] - 126:3 nothing [4] - 30:12, 30:14, 34:25, 89:3 notice [5] - 9:12, 59:17, 69:2, 83:18, 105:16 noticed [1] - 94:24 notified [1] - 123:7 number [5] - 22:24, 60:16, 91:20, 99:11, 107:23
-----------------------------	--	--	--	--

numbered [1] - 127:9	Oklahoma [4] - 58:21, 58:22, 68:3, 106:22	106:8, 110:24, 111:22, 116:21, 120:10, 123:16, 125:10	86:19, 91:17, 111:6	39:4, 80:20, 108:5
O	old [5] - 28:17, 29:13, 92:5, 111:11, 111:15	otherwise [1] - 123:9	partiality [1] - 126:14	people [34] - 9:15, 13:5, 13:8, 18:19, 18:21, 19:17, 22:11, 22:24, 23:8, 27:22, 59:11, 60:16, 68:9, 68:11, 74:25, 76:25, 80:7, 80:8, 80:10, 80:13, 91:20, 101:2, 102:2, 106:21, 108:4, 111:22, 116:10, 116:11, 118:22, 123:11, 124:23
o'clock [3] - 122:21, 123:10, 125:4	oldest [1] - 107:5	ought [3] - 12:22, 12:23, 13:9	participate [1] - 44:23	Peremptory [2] - 4:4, 4:7
oath [39] - 8:5, 8:11, 33:1, 63:4, 65:11, 65:12, 66:5, 66:23, 68:25, 70:10, 70:18, 71:14, 73:17, 80:24, 82:5, 84:9, 84:10, 84:12, 85:7, 86:4, 86:13, 86:14, 86:19, 87:18, 88:17, 88:21, 88:22, 89:4, 89:8, 90:14, 90:15, 90:17, 90:21, 91:7, 122:11	Olympics [2] - 47:8, 47:17	out-of-pocket [1] - 53:2	participation [1] - 50:22	peremptory [4] - 50:10, 50:15, 122:5, 125:13
obey [1] - 70:19	once [10] - 11:12, 30:17, 30:20, 37:14, 78:20, 90:14, 95:19, 102:22, 122:13, 123:20	outcome [2] - 60:22, 75:7	particular [23] - 7:17, 12:18, 20:16, 24:18, 24:24, 37:1, 37:4, 37:18, 37:23, 54:2, 58:24, 59:24, 61:1, 70:24, 74:5, 74:21, 81:7, 91:10, 99:12, 108:25, 109:6, 111:19, 115:12	perfectly [1] - 118:22
objective [1] - 98:5	Once [1] - 120:9	outside [3] - 10:11, 14:23, 22:25	particularly [2] - 8:2, 12:1	perks [1] - 48:5
obligated [3] - 17:20, 17:21, 31:21	one [62] - 10:5, 10:14, 12:20, 14:13, 15:22, 18:5, 18:17, 23:22, 24:12, 24:18, 24:21, 24:23, 25:3, 25:12, 26:2, 37:25, 39:12, 40:4, 44:7, 44:18, 47:17, 51:5, 59:7, 61:15, 62:14, 62:15, 67:11, 68:5, 68:15, 69:6, 78:7, 79:6, 79:25, 81:20, 87:5, 95:6, 95:8, 98:8, 99:3, 100:1, 102:18, 103:22, 104:5, 105:4, 105:24, 106:5, 106:10, 106:12, 106:21, 107:7, 107:14, 107:15, 111:1, 112:14, 112:16, 117:12, 118:21, 118:25, 119:7	overseas [1] - 58:18	parties [6] - 51:14, 124:9, 124:12, 126:12, 127:7, 127:15	person [36] - 6:3, 8:24, 12:19, 12:20, 13:3, 15:10, 18:6, 20:22, 20:24, 21:1, 37:24, 55:22, 56:6, 60:5, 67:10, 67:11, 68:15, 69:16, 70:3, 72:20, 72:21, 74:6, 76:6, 76:21, 81:7, 81:12, 98:2, 101:9, 102:17, 106:9, 111:2, 111:9, 113:10, 119:1, 119:3, 119:9
obligates [1] - 8:7	one-half [1] - 102:18	own [12] - 41:7, 49:13, 67:22, 79:8, 84:24, 97:14, 115:13, 117:1, 117:3, 117:13, 120:5, 123:23	parts [3] - 17:5, 19:1, 68:11	person's [4] - 14:1, 87:8, 113:9, 118:17
obligation [3] - 24:7, 85:23, 86:2	one-time [1] - 112:14	P	party [2] - 31:11, 124:6	personal [2] - 29:23, 65:21
observe [1] - 47:24	ones [2] - 62:9, 77:15	PAGE [1] - 4:2	pass [3] - 89:15, 121:20, 123:13	personnel [1] - 124:7
obviously [5] - 15:15, 20:2, 39:9, 39:22, 45:24	ongoing [1] - 58:19	pages [1] - 66:1	past [7] - 41:14, 42:16, 78:25, 112:1, 112:11, 126:10	persons [1] - 124:24
Obviously [1] - 112:2	open [18] - 7:21, 23:9, 25:18, 32:5, 65:22, 66:13, 66:22, 73:2, 73:18, 80:25, 82:6, 82:23, 83:3, 85:8, 87:19, 88:2, 88:6, 127:10	paid [2] - 53:11, 127:18	patient [1] - 120:14	persuasive [1] - 41:19
occasion [4] - 15:22, 16:24, 95:6, 95:7	operate [1] - 117:22	paid/will [1] - 127:18	pause [2] - 83:25, 84:5	pertains [1] - 12:7
occupation [1] - 92:24	operations [1] - 58:19	pain [1] - 100:8	pay [6] - 52:22, 52:23, 53:8, 107:7, 107:9, 118:3	phase [37] - 13:12, 13:13, 13:15, 13:16, 13:18, 15:8, 15:16, 15:17, 15:20, 16:2, 16:7, 16:11, 16:12, 16:17, 24:15, 24:16, 26:10, 39:17, 39:19, 43:13, 46:5, 57:12, 72:15, 72:16, 73:21, 73:24, 73:25, 74:4, 74:8, 81:2, 82:17, 83:7, 111:5, 111:7
occur [4] - 110:14, 110:18, 110:19, 110:25	opinion [4] - 10:12, 36:19, 44:11, 97:14	Pamela [4] - 6:5, 34:4, 56:8, 89:21	peaceful [1] - 79:25	phone [1] - 124:17
occurred [5] - 38:1, 38:6, 42:25, 43:8, 127:10	opinions [1] - 41:22	panel [6] - 37:1, 52:3, 52:11, 56:17, 114:1, 122:23	penal [1] - 67:16	photo [1] - 87:8
occurrence [1] - 112:15	opportunity [2] - 5:23, 56:2	paperwork [1] - 16:25	Penal [1] - 37:7	phrase [19] - 17:7, 17:10, 17:13, 19:1, 19:6, 20:8, 20:10, 20:14, 20:16, 21:10,
OF [4] - 4:1, 5:2, 127:1, 127:1	opposed [2] - 38:3, 110:18	Pardon [2] - 102:25, 103:4	penalties [1] - 101:12	
offense [12] - 10:15, 29:12, 29:22, 45:15, 45:25, 46:19, 64:17, 69:6, 99:3, 99:13, 102:14, 103:18	options [1] - 76:25	parent [2] - 114:15, 115:3	penalty [50] - 5:24, 10:9, 10:13, 10:16, 10:20, 11:25, 12:12, 12:15, 12:17, 12:24, 13:4, 13:6, 13:9, 13:25, 14:14, 18:6, 18:18, 18:20, 23:23, 26:24, 28:9, 29:5, 30:2, 30:15, 32:3, 32:6, 33:10, 33:17, 36:19, 56:4, 63:13, 63:25, 64:19, 67:6, 81:21, 82:11, 84:2, 85:5, 88:15, 97:11, 100:3, 100:25, 101:5, 102:12, 103:20, 108:6, 108:18, 108:20, 109:9, 121:8	
offenses [1] - 103:20	order [14] - 15:22, 37:8, 41:12, 42:23, 47:13, 98:9, 99:19,	parental [1] - 114:17	penitentiary [9] - 14:23, 15:1, 15:2, 23:8, 23:14, 23:17,	
offer [1] - 118:12		parents [1] - 92:9		
office [9] - 58:7, 61:7, 61:12, 61:14, 62:7, 62:8, 62:19, 95:19, 95:21		parking [2] - 114:5, 123:13		
officer [1] - 104:1		parole [15] - 14:17, 14:20, 38:18, 38:20, 38:23, 76:18, 76:20, 102:12, 102:15, 102:18, 102:21, 102:24, 103:10, 103:14, 103:18		
offices [1] - 93:5		Paroles [2] - 102:25, 103:4		
OFFICIAL [1] - 127:19		part [23] - 12:11, 22:12, 22:13, 33:16, 45:7, 50:24, 58:18, 65:11, 67:5, 68:15, 68:16, 71:22, 72:1, 79:8, 79:9, 80:21, 82:5, 84:9, 84:15,		
Official [3] - 126:19, 127:2, 127:22				

<p>21:21, 21:22, 25:18, 26:4, 26:12, 67:23, 86:11</p> <p>picked [2] - 38:25, 45:2</p> <p>picture [2] - 39:25, 44:19</p> <p>piece [1] - 87:6</p> <p>piecemeal [1] - 36:25</p> <p>pins [4] - 48:6, 48:7, 48:9, 48:11</p> <p>pitcher [1] - 56:22</p> <p>place [4] - 59:24, 76:8, 79:20, 79:25</p> <p>placed [2] - 52:10, 114:19</p> <p>plastic [1] - 50:23</p> <p>play [1] - 90:10</p> <p>playing [1] - 59:25</p> <p>pocket [1] - 53:2</p> <p>point [12] - 11:19, 11:22, 24:24, 32:5, 59:7, 68:23, 72:22, 77:5, 94:2, 105:9, 120:16, 123:4</p> <p>Police [1] - 59:7</p> <p>police [4] - 59:9, 71:2, 95:9, 104:1</p> <p>portions [1] - 127:6</p> <p>poses [1] - 16:19</p> <p>position [5] - 90:16, 96:25, 105:2, 105:9, 117:22</p> <p>possibility [5] - 19:20, 19:24, 38:18, 102:12, 102:15</p> <p>possible [9] - 10:13, 12:23, 12:25, 23:15, 77:21, 78:13, 83:1, 110:13, 110:18</p> <p>possibly [6] - 13:5, 20:15, 42:7, 90:10, 110:13, 121:16</p> <p>post [1] - 58:6</p> <p>postal [2] - 58:2, 59:12</p> <p>potential [3] - 36:1, 52:2, 54:16</p> <p>Potential [2] - 5:14, 55:13</p> <p>powerful [1] - 49:19</p> <p>powerpoint [1] - 12:8</p> <p>preparation [1] - 127:17</p> <p>prepares [1] - 65:25</p> <p>preponderance [1] - 114:8</p> <p>present [3] - 5:4, 5:8, 51:12</p> <p>presented [2] - 46:23,</p>	<p>124:4</p> <p>presents [1] - 107:5</p> <p>presumes [1] - 98:15</p> <p>presumption [3] - 40:18, 99:14, 108:7</p> <p>pretty [5] - 20:6, 21:9, 23:9, 66:20, 97:18</p> <p>previous [1] - 26:15</p> <p>previously [1] - 123:15</p> <p>priority [1] - 35:20</p> <p>prison [14] - 14:17, 14:19, 22:5, 22:17, 22:21, 22:25, 76:20, 77:3, 79:18, 80:10, 80:11, 103:11, 103:13, 118:2</p> <p>prisoner [1] - 22:4</p> <p>prisoners [4] - 22:6, 48:18, 48:20, 80:18</p> <p>prisons [2] - 80:13, 80:14</p> <p>probability [15] - 17:15, 19:2, 19:5, 19:7, 19:12, 19:19, 20:12, 25:2, 25:16, 77:19, 77:21, 77:24, 78:2, 109:16, 110:7</p> <p>probable [3] - 110:14, 110:15, 110:19</p> <p>problem [4] - 24:1, 24:2, 41:10, 109:25</p> <p>problems [3] - 35:23, 62:9, 89:9</p> <p>problematic [1] - 119:21</p> <p>Procedure [1] - 37:6</p> <p>procedures [3] - 64:9, 64:17, 71:3</p> <p>Procedures [1] - 41:2</p> <p>proceed [2] - 7:2, 57:1</p> <p>proceeding [1] - 5:18</p> <p>proceedings [4] - 5:8, 50:20, 127:6, 127:13</p> <p>process [26] - 5:22, 8:22, 11:8, 12:11, 33:16, 34:21, 36:24, 37:13, 39:12, 40:3, 40:24, 42:21, 44:22, 50:22, 67:5, 90:8, 91:17, 101:7, 101:8, 101:25, 102:3, 102:4, 109:3, 120:18, 121:6, 121:10</p> <p>professional [1] - 126:11</p> <p>prognosis [1] - 25:4</p> <p>progress [1] - 40:14</p> <p>progression [1] -</p>	<p>43:22</p> <p>promulgated [1] - 126:4</p> <p>proof [23] - 6:22, 17:9, 17:14, 24:4, 26:6, 26:9, 26:10, 26:11, 26:16, 26:17, 30:21, 30:24, 31:20, 45:7, 71:9, 81:1, 81:5, 113:20, 113:24, 114:2, 115:6, 115:7, 118:7</p> <p>proper [4] - 37:14, 44:1, 99:15, 99:17</p> <p>property [2] - 20:25, 21:12</p> <p>prosecuting [3] - 61:15, 62:9, 62:22</p> <p>prosecution [1] - 60:22</p> <p>prosecutors [1] - 61:20</p> <p>prospect [1] - 105:1</p> <p>prospective [4] - 7:4, 55:17, 57:4, 89:23</p> <p>PROSPECTIVE [42] - 4:2, 5:12, 5:16, 6:2, 6:11, 6:15, 7:1, 50:3, 51:1, 51:3, 52:8, 52:14, 52:17, 52:19, 52:24, 53:3, 53:6, 53:10, 53:12, 53:15, 53:22, 53:25, 54:5, 54:8, 54:14, 54:20, 54:23, 55:1, 55:5, 55:11, 55:14, 56:5, 56:14, 56:19, 56:24, 65:7, 121:24, 122:15, 122:24, 123:1, 123:8, 125:2</p> <p>Prospective [4] - 4:10, 4:10, 4:11, 5:20</p> <p>protection [1] - 49:15</p> <p>prove [29] - 17:11, 17:14, 19:2, 19:23, 20:2, 20:11, 23:15, 25:15, 25:16, 37:8, 37:21, 38:5, 71:24, 74:8, 81:6, 81:11, 81:15, 82:1, 104:12, 104:16, 105:5, 108:8, 113:21, 114:7, 114:12, 118:5, 118:9, 118:10, 119:13</p> <p>proved [2] - 23:24, 115:24</p> <p>proven [3] - 31:9, 31:13, 69:23</p> <p>proves [3] - 17:19,</p>	<p>81:22, 108:24</p> <p>provides [3] - 12:17, 13:2</p> <p>province [1] - 83:24</p> <p>psychologist [4] - 94:17, 94:18, 94:19, 94:22</p> <p>publicized [1] - 35:5</p> <p>pull [1] - 94:14</p> <p>punchy [1] - 45:18</p> <p>punish [4] - 15:14, 54:12, 97:24, 106:4</p> <p>punished [2] - 54:13, 112:16</p> <p>punishment [44] - 10:13, 13:13, 13:16, 13:18, 13:20, 14:12, 15:16, 15:17, 16:7, 16:11, 16:12, 16:17, 38:11, 38:12, 39:17, 39:18, 40:4, 46:5, 57:12, 63:13, 63:25, 65:1, 65:17, 65:18, 72:6, 72:8, 72:14, 72:24, 73:1, 73:9, 73:15, 73:21, 73:25, 74:8, 99:4, 99:21, 100:16, 100:22, 101:19, 107:21, 107:25, 111:5, 117:15</p> <p>punishments [1] - 103:21</p> <p>purpose [1] - 105:19</p> <p>purposes [2] - 15:4, 102:21</p> <p>pursuant [1] - 126:8</p> <p>pushed [2] - 104:19, 111:12</p> <p>put [17] - 10:17, 41:4, 44:9, 69:20, 75:5, 76:7, 77:17, 77:19, 77:20, 77:21, 78:8, 78:21, 78:22, 86:14, 87:13, 90:16, 111:17</p> <p>puts [1] - 69:2</p> <p>putting [1] - 106:20</p>	<p>questionnaires [1] - 100:2</p> <p>questions [48] - 10:8, 10:11, 10:14, 11:17, 11:18, 12:4, 13:22, 14:11, 14:12, 14:15, 18:2, 21:4, 25:20, 35:24, 37:17, 40:6, 40:24, 49:22, 56:3, 64:14, 74:14, 74:20, 75:8, 75:17, 75:21, 76:2, 76:13, 77:11, 77:16, 78:16, 85:19, 87:23, 88:17, 89:12, 100:1, 104:23, 107:18, 108:3, 108:15, 109:10, 110:1, 112:22, 116:2, 120:7, 120:15, 124:18, 124:25</p> <p>quick [1] - 15:7</p> <p>quite [2] - 28:6, 60:15</p>
R				
<p>racking [2] - 6:20, 55:21</p> <p>raise [3] - 5:19, 55:16, 122:16</p> <p>raised [3] - 57:19, 93:18, 93:24</p> <p>range [14] - 13:20, 20:6, 38:11, 38:12, 72:6, 72:9, 72:14, 72:24, 73:1, 73:14, 73:15, 99:4, 99:21, 100:16</p> <p>rank [1] - 58:14</p> <p>rape [1] - 79:15</p> <p>rather [1] - 88:19</p> <p>reach [2] - 82:10, 116:21</p> <p>reached [1] - 125:10</p> <p>reaching [1] - 71:23</p> <p>read [8] - 16:21, 16:24, 25:24, 74:7, 74:13, 78:17, 83:10, 124:2</p> <p>reading [2] - 9:12, 76:6</p> <p>ready [1] - 55:8</p> <p>real [1] - 15:7</p> <p>reality [1] - 38:25</p> <p>really [23] - 10:18, 10:19, 10:21, 10:24, 11:3, 34:12, 34:25, 36:20, 44:20, 46:12, 47:15, 49:8, 52:25,</p>				
Q				
<p>qualified [3] - 91:10, 99:20, 99:23</p> <p>qualify [1] - 64:17</p> <p>questionnaire [14] - 6:7, 9:12, 9:17, 10:9, 38:21, 56:4, 56:12, 57:11, 60:8, 60:13, 63:12, 63:20, 74:22, 92:5</p>				

61:6, 63:17, 63:21, 74:24, 74:25, 79:20, 90:4, 96:21, 96:22 realm [1] - 22:7 reason [12] - 12:7, 12:10, 33:14, 40:21, 46:18, 67:4, 90:11, 104:13, 104:21, 105:20, 115:15, 123:6 reasonable [34] - 17:8, 17:10, 17:11, 17:15, 17:20, 19:2, 19:6, 23:16, 23:24, 26:5, 26:13, 30:23, 37:10, 39:1, 42:25, 43:7, 43:23, 43:25, 44:12, 70:6, 81:6, 81:16, 81:22, 82:2, 83:22, 112:25, 113:8, 113:20, 113:22, 115:6, 115:7, 115:9, 115:16, 115:18 reasonably [3] - 97:22, 98:6, 126:13 reasoning [1] - 27:22 reasons [1] - 118:24 receive [6] - 13:6, 16:10, 16:11, 18:23, 28:9, 124:3 received [2] - 60:17, 78:25 receiving [2] - 23:22, 33:17 recently [1] - 7:23 receptive [1] - 85:8 recklessly [1] - 98:12 recognizes [1] - 98:21 recommends [1] - 75:18 Record [3] - 127:8, 127:13, 127:17 record [2] - 44:3, 51:13 reduce [1] - 85:2 reduces [1] - 30:12 reducing [3] - 27:13, 46:11, 84:17 refer [1] - 109:14 reflect [1] - 78:17 reflects [1] - 127:14 refresh [1] - 77:13 regard [4] - 27:13, 84:17, 109:6, 126:9 regarding [4] - 36:19, 46:4, 49:13, 124:25 regardless [1] - 117:2 regards [1] - 108:25 regular [5] - 38:4, 72:2, 72:6, 72:16, 73:21 relationship [1] - 96:6 relationships [1] - 126:12 relative [1] - 97:3 release [2] - 48:18, 76:19 released [4] - 11:14, 48:20, 54:15, 54:17 relevant [1] - 111:7 religion [1] - 10:25 religious [5] - 12:10, 33:15, 67:4, 93:22, 93:23 rely [1] - 89:7 remaining [1] - 50:19 Remember [1] - 18:1 remember [13] - 5:21, 17:9, 18:1, 47:16, 61:6, 68:24, 71:2, 71:23, 72:4, 72:7, 72:11, 114:1, 122:19 remind [1] - 123:20 removed [1] - 114:18 render [5] - 8:12, 65:14, 66:6, 66:24, 71:18 report [3] - 122:21, 124:2, 124:18 reported [1] - 127:11 REPORTER [3] - 25:12, 32:20, 65:2 Reporter [4] - 5:7, 126:19, 127:2, 127:22 reporter [1] - 5:10 Reporter's [3] - 127:8, 127:13, 127:17 represent [2] - 62:5, 89:21 representation [1] - 95:18 represented [4] - 6:5, 56:7, 56:9, 95:14 reputation [2] - 16:4, 74:2 request [1] - 95:25 requested [1] - 127:7 require [1] - 105:22 required [5] - 37:21, 90:20, 118:9, 118:10 requires [1] - 73:2 research [5] - 123:22, 124:1, 124:8, 124:19, 124:24 reserve [1] - 64:25 Reserve [1] - 92:20 reserved [2] - 72:9, 103:22 reservist [1] - 58:9	respect [1] - 75:15 respective [1] - 127:15 response [2] - 44:1, 46:14 responses [1] - 9:17 responsible [1] - 86:4 rest [5] - 22:9, 23:14, 23:17, 77:2, 118:2 restricted [1] - 15:9 result [5] - 32:3, 33:17, 40:6, 88:14, 117:13 results [5] - 12:12, 40:7, 40:16, 40:22, 67:5 retardation [1] - 43:5 retire [1] - 47:5 return [4] - 18:10, 32:5, 32:14, 50:20 rights [3] - 36:1, 49:11, 114:17 rise [2] - 28:2, 88:10 rises [1] - 88:6 roadmap [2] - 37:7, 37:11 robberies [1] - 21:17 robbing [1] - 79:15 Robert [2] - 6:6, 56:10 room [7] - 49:20, 50:25, 60:15, 63:17, 66:3, 68:12, 85:22 ruiz [1] - 120:15 RUIZ [2] - 4:8, 57:3 Ruiz [5] - 55:13, 55:15, 89:20, 121:19, 122:9 rule [1] - 126:3 rules [3] - 49:19, 70:19, 71:6 run [1] - 104:19 runner [1] - 70:15 running [1] - 104:17	104:4 school [1] - 93:13 scoot [2] - 6:17, 55:19 scratch [1] - 82:24 screen [2] - 63:3, 67:10 search [1] - 124:6 Sears [1] - 107:6 seat [5] - 5:13, 6:20, 50:1, 55:24, 121:21 second [21] - 13:12, 14:6, 16:21, 25:24, 65:12, 66:5, 68:25, 70:9, 72:16, 74:12, 77:12, 83:13, 83:18, 84:4, 87:4, 87:21, 91:17, 109:1, 116:6, 117:8, 117:17 security [1] - 47:7 see [65] - 17:13, 18:14, 20:8, 20:19, 21:2, 21:14, 23:9, 23:12, 24:7, 24:21, 25:1, 29:7, 31:14, 42:23, 43:15, 43:20, 44:17, 45:10, 48:3, 48:22, 79:3, 80:17, 84:6, 84:21, 85:15, 88:6, 90:2, 90:12, 91:2, 91:7, 91:12, 94:17, 94:22, 98:15, 98:22, 99:17, 102:7, 103:7, 103:10, 104:20, 105:6, 106:6, 106:25, 108:9, 108:14, 109:1, 109:23, 110:9, 110:16, 111:20, 112:8, 112:20, 113:18, 115:19, 115:25, 117:12, 117:16, 118:16, 119:10, 119:13, 120:2, 120:22, 121:3, 123:4, 125:3 sees [1] - 90:2 selected [4] - 8:8, 65:13, 65:20, 66:5 self [1] - 98:19 self-defense [1] - 98:19 send [1] - 124:15 sense [22] - 22:20, 64:22, 64:24, 66:16, 67:1, 70:7, 74:10, 75:2, 75:10, 76:3, 76:9, 77:6, 79:10, 81:8, 81:13, 85:10, 86:6, 86:15, 87:25, 88:23, 89:10, 115:16	sent [1] - 16:25 sentence [36] - 14:7, 14:17, 14:19, 14:21, 15:1, 18:3, 18:10, 18:11, 18:23, 26:23, 29:5, 30:2, 30:7, 30:15, 32:15, 40:16, 40:21, 40:22, 74:18, 74:20, 76:18, 85:4, 99:16, 99:17, 102:19, 103:5, 108:24, 116:8, 117:7, 117:12, 117:14, 118:1, 118:18, 119:24, 120:6, 120:11 sentenced [1] - 23:14 sentencing [3] - 75:9, 76:5, 111:7 separate [3] - 82:15, 83:6, 106:4 separately [1] - 106:5 sequence [1] - 76:7 sequestered [1] - 123:17 serious [1] - 54:24 seriously [1] - 54:4 seriousness [1] - 54:2 serve [12] - 6:10, 14:24, 29:17, 35:22, 36:15, 56:13, 56:18, 74:22, 96:22, 99:23, 103:5, 105:22 served [3] - 102:18, 102:22, 119:4 service [12] - 9:22, 11:14, 34:14, 48:24, 58:2, 59:12, 74:25, 89:23, 91:20, 124:12, 124:13, 124:22 services [2] - 93:2, 94:1 session [1] - 77:15 set [4] - 42:21, 65:21, 86:20, 105:10 several [1] - 38:16 shall [1] - 84:16 sheriff [1] - 53:24 Sheriff's [1] - 47:3 shift [1] - 7:15 shoot [1] - 68:15 shooting [2] - 69:10, 69:12 shootings [1] - 68:9 shopping [1] - 107:4 shorthand [1] - 74:15 shortly [2] - 36:13, 49:10 shot [5] - 68:10,
--	--	---	---

68:11, 68:17, 69:16, 69:22 show [4] - 31:18, 63:3, 85:24, 86:2 showing [1] - 54:3 sick [1] - 97:3 side [1] - 111:8 sides [4] - 5:23, 56:1, 56:21, 91:18 simple [3] - 66:20, 88:19, 97:18 simplest [1] - 84:10 simply [3] - 63:5, 75:21, 84:12 single [7] - 38:16, 104:6, 106:23, 107:9, 110:5, 119:7 sister [3] - 60:4, 60:10, 62:24 sit [5] - 13:19, 27:18, 55:9, 55:23, 119:16 sits [1] - 109:15 sitting [2] - 35:11, 66:12 situation [7] - 12:18, 44:8, 49:1, 49:16, 98:24, 107:3, 112:15 situations [1] - 99:6 six [7] - 63:15, 92:11, 92:16, 111:11, 111:15, 116:15 sixth [1] - 122:22 size [1] - 78:15 slide [6] - 15:8, 35:25, 39:14, 44:9, 49:8, 97:12 slides [1] - 13:24 so.. [3] - 7:21, 35:16, 57:25 social [4] - 93:2, 94:16, 124:21, 126:11 society [24] - 14:4, 17:18, 18:5, 18:13, 18:20, 18:22, 21:22, 22:2, 22:7, 22:15, 22:16, 22:17, 22:18, 22:21, 22:25, 23:18, 25:3, 27:4, 79:24, 80:5, 80:6, 80:17, 80:21 soft [1] - 6:19 soft-spoken [1] - 6:19 solely [2] - 83:23, 86:21 solid [1] - 28:22 someone [14] - 10:20, 12:23, 15:14, 16:15, 20:15, 27:6, 27:15, 27:18, 27:19, 28:18,	28:23, 33:17, 78:12, 82:14 someplace [1] - 114:19 something's [1] - 110:22 sometimes [9] - 21:4, 21:5, 23:8, 35:10, 35:14, 72:13, 84:11, 98:16, 119:21 somewhere [1] - 19:23 sorry [4] - 45:18, 65:2, 82:22, 101:2 sort [3] - 41:11, 41:18, 42:2 source [1] - 124:4 space [1] - 8:2 Special [15] - 14:5, 14:9, 16:20, 25:21, 25:23, 26:11, 32:3, 42:23, 43:21, 43:25, 44:10, 81:4, 82:15, 82:16 special [13] - 13:22, 13:24, 14:8, 16:20, 26:3, 40:20, 41:1, 47:13, 74:14, 77:12, 77:14, 87:21, 108:1 spend [2] - 77:2, 92:15 spending [1] - 118:1 spent [3] - 9:7, 22:10 spoken [2] - 6:19, 51:20 spot [1] - 87:13 stabbed [2] - 69:17, 69:23 stairs [1] - 111:13 stamps [1] - 93:5 stand [2] - 52:5, 66:11 standard [3] - 113:20, 113:24, 114:11 stands [1] - 119:8 start [1] - 65:5 started [6] - 22:11, 63:11, 92:22, 94:13, 94:23 State [45] - 6:5, 6:22, 15:25, 17:9, 17:14, 17:19, 19:1, 19:23, 20:2, 23:15, 23:23, 24:3, 24:19, 26:6, 28:8, 30:22, 31:4, 31:12, 37:8, 41:24, 50:14, 56:9, 62:4, 68:24, 68:25, 69:20, 70:2, 70:4, 71:8, 71:15, 73:22, 73:24, 76:22, 77:4, 80:25,	81:5, 81:22, 86:25, 108:8, 108:24, 111:14, 114:14, 122:10, 125:13, 127:4 STATE [3] - 7:6, 57:6, 127:1 state [8] - 50:4, 50:9, 50:12, 56:25, 98:13, 103:3, 122:1, 122:5 state's [1] - 4:3 State's [5] - 4:4, 4:9, 31:3, 31:9, 81:10 statement [6] - 45:15, 71:3, 71:7, 71:17, 87:7 statements [2] - 70:24 states [1] - 98:9 States [1] - 59:19 station [1] - 7:17 status [1] - 45:25 statute [2] - 104:5, 108:21 statutory [1] - 33:11 stayed [1] - 47:12 staying [1] - 92:16 step [6] - 18:5, 23:22, 51:7, 81:20, 90:8, 90:9 steps [1] - 64:17 still [7] - 7:14, 36:2, 71:25, 92:17, 98:12, 103:11, 105:8 stop [1] - 83:16 store [1] - 107:6 story [1] - 87:8 straight [1] - 41:1 straightforward [1] - 30:18 Street [1] - 60:3 street [3] - 22:8, 62:13, 111:16 streets [1] - 77:10 strictly [1] - 30:25 strikes [1] - 36:3 structure [1] - 40:8 student [1] - 92:25 study [2] - 57:14, 93:1 stuff [7] - 17:3, 48:12, 63:3, 80:15, 86:9, 96:5, 111:3 styled [1] - 127:9 subject [1] - 12:23 submission [1] - 108:2 substantial [1] - 6:9 sue [2] - 114:4, 114:6 sufficient [24] - 14:7, 26:22, 28:3, 29:3, 29:10, 29:19, 29:24,	29:25, 30:11, 31:19, 74:17, 84:25, 85:3, 85:15, 88:7, 88:11, 113:5, 113:7, 113:11, 113:14, 114:23, 115:2, 119:23 sufficiently [6] - 29:14, 30:5, 30:7, 31:2, 31:5, 31:12 Suite [2] - 126:20, 127:23 summarized [1] - 39:13 supposed [7] - 34:13, 34:14, 54:3, 62:25, 104:14, 105:16 Supreme [1] - 126:3 surprise [1] - 104:18 surrounding [1] - 124:11 suspicion [1] - 35:17 swapping [1] - 48:11 swear [2] - 5:18, 88:19 sworn [7] - 5:9, 5:20, 7:4, 55:17, 57:4, 122:12, 122:18 Sworn..... [1] - 4:10 sympathy [1] - 120:25 system [6] - 9:15, 34:25, 48:14, 50:23, 70:15, 80:20	test [1] - 91:7 testified [2] - 7:5, 57:5 testimony [4] - 41:19, 66:11, 69:15, 87:2 Texas [20] - 14:25, 24:19, 26:7, 28:8, 35:5, 37:24, 56:9, 62:5, 69:20, 76:22, 77:4, 87:1, 97:18, 114:14, 122:10, 126:3, 126:9, 126:20, 127:4, 127:24 TEXAS [1] - 127:1 THE [80] - 5:5, 5:7, 5:13, 5:17, 5:21, 6:3, 6:12, 6:16, 7:2, 7:6, 25:12, 32:20, 32:21, 33:23, 33:24, 49:25, 50:4, 50:7, 50:9, 50:12, 50:14, 50:17, 51:2, 51:6, 51:9, 51:13, 51:18, 51:23, 51:24, 51:25, 52:4, 52:5, 52:9, 52:15, 52:18, 52:22, 53:1, 53:8, 53:11, 53:13, 53:17, 53:23, 54:1, 54:7, 54:11, 54:15, 54:21, 54:24, 55:2, 55:6, 55:7, 55:8, 55:12, 55:15, 55:18, 56:6, 56:15, 56:20, 56:25, 57:6, 65:2, 65:3, 65:8, 89:16, 89:18, 121:21, 121:25, 122:3, 122:5, 122:7, 122:9, 122:16, 122:19, 122:25, 123:2, 123:9, 125:3, 125:7, 125:16, 127:1 theirs [1] - 103:2 themselves [2] - 79:7, 105:2 there'd [1] - 79:17 thereafter [1] - 36:14 therefore [1] - 29:4 they've [9] - 31:1, 40:18, 76:23, 76:25, 102:18, 104:3, 104:10, 104:22, 123:2 thinking [5] - 100:6, 100:8, 100:9, 100:20, 118:21 thirsty [1] - 56:23 thoughts [1] - 75:12 thousand [1] - 99:6 threat [11] - 14:3,
---	--	--	--	---

17:17, 18:4, 18:13, 18:20, 18:22, 23:18, 25:3, 27:4, 109:23, 113:10 three [3] - 40:10, 40:11, 121:7 throughout [3] - 32:23, 73:8, 80:2 tie [2] - 46:22, 70:14 tied [1] - 116:14 today [10] - 8:5, 8:8, 8:25, 15:4, 27:18, 33:6, 36:17, 55:3, 56:2, 114:6 together [1] - 16:18 took [7] - 8:5, 34:6, 61:9, 68:5, 68:18, 70:18 topics [1] - 63:12 torn [1] - 11:3 total [3] - 39:25, 44:19, 127:16 totally [1] - 48:25 toward [1] - 42:16 towards [1] - 60:10 town [1] - 68:15 track [2] - 37:12, 44:3 trained [1] - 47:20 training [2] - 47:13, 47:23 transaction [25] - 12:21, 38:6, 38:10, 67:12, 67:13, 67:17, 67:20, 68:2, 68:21, 71:25, 72:1, 76:24, 104:7, 106:1, 106:3, 106:12, 106:16, 106:24, 107:9, 107:14, 107:15, 110:5, 110:6 transactions [2] - 107:10, 107:11 transcription [1] - 127:5 treat [1] - 83:6 treated [1] - 102:20 treatment [1] - 97:5 trial [39] - 6:3, 6:13, 13:13, 13:17, 13:18, 13:19, 15:9, 15:13, 15:16, 15:17, 15:20, 15:22, 16:2, 16:7, 16:8, 18:11, 23:22, 24:10, 24:15, 24:16, 31:10, 32:6, 32:23, 34:20, 43:13, 56:7, 61:21, 69:14, 69:15, 87:5, 90:10, 97:9, 104:18, 111:2, 119:17, 122:14,	122:20, 123:3, 123:5 trial's [1] - 121:14 trials [2] - 13:14, 35:5 tried [2] - 35:18, 59:6 trouble [4] - 60:5, 76:12, 80:14, 108:14 true [4] - 43:25, 70:22, 81:25, 127:5 truly [1] - 127:13 truth [5] - 8:7, 49:12, 63:5, 114:24 try [6] - 35:7, 46:5, 108:21, 111:17, 114:15, 116:17 trying [4] - 46:2, 47:16, 70:12, 110:21 turned [1] - 79:20 Tweet [1] - 124:12 twins [1] - 93:11 Twitter [1] - 124:21 two [30] - 7:21, 13:24, 19:23, 35:16, 35:18, 38:10, 43:1, 67:12, 71:11, 74:14, 74:20, 75:21, 76:12, 76:24, 76:25, 77:16, 87:21, 90:8, 93:10, 98:8, 103:21, 106:4, 107:10, 107:11, 112:3, 117:23, 123:3 two-step [1] - 90:8 type [14] - 13:8, 13:18, 19:17, 21:13, 25:7, 25:17, 26:21, 27:20, 28:21, 64:20, 65:5, 94:5, 113:9, 114:22 types [1] - 109:17 typewriter [1] - 83:15 typically [1] - 35:19	unit [1] - 61:18 United [1] - 59:19 unless [2] - 108:8, 108:24 unnecessary [1] - 36:2 unreasonable [1] - 115:9 up [50] - 6:17, 6:20, 7:19, 8:1, 17:7, 21:13, 22:9, 26:5, 26:13, 26:20, 29:11, 29:20, 30:23, 30:25, 38:25, 45:1, 45:2, 52:4, 54:3, 55:9, 55:19, 55:21, 57:24, 63:3, 67:16, 67:21, 68:3, 68:20, 68:23, 70:4, 74:7, 74:8, 77:15, 78:15, 79:7, 85:24, 86:2, 92:16, 96:4, 96:20, 97:12, 99:23, 102:20, 108:11, 113:12, 116:14, 119:2, 120:16, 121:16 upper [1] - 73:1 upset [2] - 68:13, 70:12 USC [1] - 47:12	violence [30] - 17:17, 19:4, 20:11, 20:13, 20:22, 20:24, 20:25, 21:1, 21:15, 21:18, 22:3, 25:9, 25:17, 60:12, 60:17, 61:18, 62:23, 78:20, 78:24, 79:4, 79:13, 79:14, 79:16, 79:17, 95:3, 109:19, 109:21, 111:24, 111:25, 112:7 violent [8] - 20:18, 21:12, 60:9, 79:20, 79:21, 112:6, 112:10, 112:12 visit [1] - 89:22 visitors [1] - 23:2 visually [1] - 12:9 vital [1] - 50:22 VOIR [4] - 7:6, 33:24, 57:6, 89:18 Voir [4] - 4:3, 4:4, 4:9, 4:9 voir [1] - 8:3 VOL [1] - 4:2 volume [1] - 127:8 VOLUME [1] - 5:2 volunteer [1] - 74:24 vote [14] - 17:21, 17:22, 29:18, 30:13, 75:22, 76:1, 82:15, 82:16, 82:18, 88:7, 88:11, 88:13, 117:1, 117:3 voted [1] - 82:14 votes [5] - 40:10, 49:14, 82:10, 84:1, 84:2 vs [1] - 122:11	94:15 weeks [9] - 34:21, 35:9, 35:18, 57:15, 63:15, 65:24, 67:15, 94:23, 123:4 weigh [4] - 42:4, 42:13, 119:25, 120:1 weight [2] - 114:9, 114:10 whatsoever [1] - 124:8 whichever [1] - 102:19 whole [6] - 33:10, 79:9, 84:20, 87:17, 105:19, 111:9 wide [4] - 20:6, 23:9, 25:18, 99:3 William [3] - 6:4, 56:7, 122:11 wish [1] - 111:17 Witness [1] - 83:12 witness [5] - 31:3, 31:9, 66:11, 70:23, 87:5 WITNESS [2] - 32:21, 127:19 witnesses [1] - 87:6 WITNESSES [1] - 4:1 wonder [2] - 83:14, 86:11 word [8] - 19:5, 19:18, 20:17, 29:25, 67:20, 67:21, 77:18, 91:24 words [8] - 32:4, 67:16, 69:19, 69:20, 70:2, 70:3, 77:17, 110:2 wordy [1] - 83:13 worker [1] - 94:16 works [17] - 8:17, 12:2, 58:1, 70:15, 91:12, 98:15, 103:7, 104:24, 106:25, 107:18, 110:9, 111:20, 112:20, 113:18, 115:19, 115:25, 119:14 world [1] - 28:21 worried [1] - 47:21 worry [1] - 11:16 Worth [7] - 59:7, 62:17, 68:10, 68:16, 68:17, 126:20, 127:24 worth [1] - 119:9 write [2] - 108:21, 124:10 writing [3] - 95:25, 123:16, 127:7 wrote [2] - 100:6,	
ultimately [2] - 8:18, 75:8 unanimous [4] - 49:16, 82:10, 84:1, 117:11 unanimously [4] - 81:11, 82:14, 116:6, 120:10 uncle [3] - 52:20, 53:9, 53:23 under [7] - 19:7, 28:8, 29:3, 63:4, 76:22, 83:1, 86:2 understandings [1] - 110:3 unfit [2] - 114:15, 115:3	U	V.T.C.A [1] - 126:5 vacuum [2] - 63:15, 63:23 vague [1] - 20:5 Vanessa [1] - 94:20 variance [1] - 105:3 variety [1] - 9:16 verdict [13] - 8:12, 15:13, 32:5, 37:14, 65:14, 66:6, 71:18, 71:23, 116:18, 116:21, 116:23, 116:24, 117:1 versions [1] - 74:16 versus [3] - 25:4, 40:5, 42:11 victim [1] - 105:8 victims [2] - 101:1, 120:25 victoria [1] - 94:8 video [1] - 87:8 view [1] - 99:24 views [3] - 10:10, 12:7, 97:10 violate [1] - 116:20 violated [1] - 41:15	V	Wait [1] - 29:9 wait [3] - 65:4, 66:14, 87:19 waiting [1] - 35:11 walk [1] - 86:10 WALKER [2] - 126:18, 127:21 Walker [3] - 5:8, 127:2, 127:12 warrant [3] - 26:23, 30:1, 85:16 water [2] - 6:25, 56:22 ways [1] - 103:24 wear [1] - 123:10 WEDNESDAY [1] - 5:3 week [2] - 77:15,	W

100:20
Y
y'all [3] - 94:1, 107:22, 125:7
y'all's [1] - 96:6
year [2] - 58:21, 96:16
years [34] - 9:6, 13:21, 28:7, 28:8, 28:17, 29:13, 34:16, 35:4, 48:19, 49:18, 59:21, 60:25, 61:2, 61:11, 72:7, 92:23, 93:9, 95:4, 99:4, 99:11, 99:15, 100:17, 100:22, 102:19, 102:20, 102:22, 102:23, 107:23, 111:11, 111:15
yesterday [2] - 125:11, 125:12
you-all [3] - 35:8, 41:10, 47:20
youngest [1] - 94:9
yourself [6] - 41:2, 55:22, 79:5, 91:15, 92:8, 106:19
YouTube [1] - 124:21